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Wednesday
November 5, 1986

Briefings on How To Use the Federal Register—
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WHAT IT IS AND HOW TO USE IT

FOR: Any person who uses the Federal Register and Code of Federal Regulations.

WHO: The Office of the Federal Register.

WHAT: Free public briefings (approximately 2 1/2 hours) to present:

1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
2. The relationship between the Federal Register and Code of Federal Regulations.
3. The important elements of typical Federal Register documents.
4. An introduction to the finding aids of the FR/CFR system.

WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

WASHINGTON, DC

WHEN: November 18 at 9:30 a.m.

WHERE: National Archives Theater, 8th and Pennsylvania Avenue NW., Washington, DC

RESERVATIONS: Laurice Clark, 202–523–3419.

NEW YORK, NY

WHEN: December 5 at 10:00 a.m.

WHERE: Room 305A, 26 Federal Plaza, New York, NY

RESERVATIONS: Arlene Shapiro or Stephen Colon, New York Federal Information Center, 212–264–4810.

PITTSBURGH, PA

WHEN: December 8 at 1:30 p.m.

WHERE: Room 2212, William S. Moorehead Federal Building, 1000 Liberty Avenue, Pittsburgh, PA

RESERVATIONS: Kenneth Jones or Lydia Shaw
Pittsburgh: 412–644–INFO
Philadelphia: 215–597–1707, 1709

Contents

Federal Register

Vol. 51, No. 214

Wednesday, November 5, 1986

Reader Aids
Additional information, including a list of public laws, telephone numbers, and finding aids, appears in the Reader Aids section at the end of this issue.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

5 CFR
Ch. XIV 40121

7 CFR
68 40121
989 40122

Proposed Rules:
57 40174
68 40174
1064 40176
1102 40176
1106 40176
1108 40176
1126 40176
1138 40176

8 CFR
316a 40123

Proposed Rules:
103 40207
214 40207

9 CFR
92 40124

10 CFR

Proposed Rules:
70 40208
74 40208

12 CFR
543 40127
546 40127
552 40127
562 40127
563 40127
563b 40127
574 40127

14 CFR
71 40156

Proposed Rules:
39 (2 documents) 40209, 40210

15 CFR
372 40156
373 40156
374 40156
377 40156
379 40156
390 40156
399 40159

21 CFR
73 40160
172 40160

22 CFR
526 40161
527 40161

26 CFR
31 40167
602 40167

Proposed Rules:
1 40211
7 40211
20 40211
25 40211
31 40232
53 40211
56 40211

39 CFR
776 40170

47 CFR
73 (2 documents) 40170

Proposed Rules:
67 40232

49 CFR
1135 40171
1312 40171

50 CFR
216 40171
652 40173

Proposed Rules:
644 40233

Rules and Regulations

Federal Register
Vol. 51, No. 214
Wednesday, November 5, 1986

FEDERAL LABOR RELATIONS AUTHORITY

5 CFR Ch. XIV

Regional Office; Address Change

AGENCY: Federal Labor Relations Authority (including the General Counsel of the Federal Labor Relations Authority) and Federal Service Impasses Panel.

ACTION: Amendment of rules and regulations.

SUMMARY: This document amends Appendix A, paragraph (d)(9) (46 FR 40769) of the rules and regulations of the Federal Labor Relations Authority (Authority), General Counsel of the Federal Labor Relations Authority (General Counsel), and Federal Service Impasses Panel (Panel), published at 5 CFR Part 2400 *et seq.*, (1985) to establish a new location, mailing address and telephone numbers for the Authority's San Francisco Regional Office.

EFFECTIVE DATE: October 15, 1986.

FOR FURTHER INFORMATION CONTACT: Nancy Anderson Speight, Deputy to the Assistant General Counsel (202) 382–0811.

SUPPLEMENTARY INFORMATION: Effective January 28, 1980, the Authority, General Counsel and Panel published at 45 FR 3482, January 17, 1980, final rules and regulations to govern the processing of cases by the Authority, General Counsel and Panel under Chapter 71 of Title 5 of the United States Code (5 CFR Part 2400 *et seq.* (1985)). These rules and regulations are required by Title VII of the Civil Service Reform Act of 1978 and are sets forth in 5 CFR Part 2400 *et seq.* (1985). Appendix A, paragraph (d) of the foregoing rules and regulations sets forth office addresses and telephone numbers of the Regional Directors of the Authority. This amendment sets forth the new location, mailing address and telephone numbers of the San Francisco Regional Office of the Authority.

Accordingly, in Appendix A to Chapter XIV, pargraph (d)(9) of the Authority, General Counsel, and Panel rules and regulations (5 CFR Part 2400 *et seq.* (1985)) is revised to read as follows:

Appendix A to 5 CFR Ch. XIV—Current Addresses and Geographic Jurisdictions

* * * * *

(d) The Office addresses of Regional Directors of the Authority are as follows:

* * * * *

(9) *San Francisco Regional Office*—Suite 220, 901 Market Street, San Francisco, California 94103, Telephone: FTS—995–5000. Commercial—(415) 995–5000.

(5 U.S.C. 7134)

Dated: October 16, 1986.

John C. Miller,

General Counsel, Federal Labor Relations Authority.

[FR Doc. 86–24980 Filed 11–4–86; 8:45 am]
BILLING CODE 6727–01–M

DEPARTMENT OF AGRICULTURE

Federal Grain Inspection Service

7 CFR Part 68

U.S. Standards for Lentils, Whole Dry Peas, and Split Peas

AGENCY: Federal Grain Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: The Federal Grain Inspection Service (FGIS) is revising the U.S. Standards for Lentils to set grade limits for skinned lentils for U.S. No. 1 and U.S. No. 2 grades, and lower the percentage of skinned lentils necessary for a Sample grade designation. This change is made to facilitate the marketing of lentils. No changes are being made to the U.S. Standards for Whole Dry Peas and the U.S. Standards for Split Peas.

EFFECTIVE DATE: December 5, 1986.

FOR FURTHER INFORMATION CONTACT: Lewis Lebakken, Jr., Information Resources Staff, USDA, FGIS, Room 1661 South Building, 1400 Independence Avenue SW., Washington, DC, telephone (202) 382–1738.

SUPPLEMENTARY INFORMATION:

Executive Order 12291

This final rule has been issued in conformance with Executive Order 12291 and Departmental Regulation 1512–1. This action has been classified as nonmajor because it does not meet the criteria for a major regulation established in the order.

Regulatory Flexibility Act Certification

John W. Marshall, Acting Administrator, FGIS, has determined that this final rule will not have a significant economic impact on a substantial number of small entities because those persons who apply the standards and most users of pea and lentil inspection services do not meet the requirements for small entities as defined in the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Further, the standards are applied equally to all entities by FGIS employees and licensed persons.

Standards Review

In compliance with the requirement for the periodic review of existing regulations, FGIS reviewed and proposed to revise the U.S. Standards for Lentils in the August 26, 1986 **Federal Register** (51 FR 30368), as corrected on September 17, 1986 (51 FR 32924). The U.S. Standards for Whole Dry Peas and the U.S. Standards for Split Peas were also reviewed. However, FGIS proposed no changes for these standards.

Various meetings were held by the dry pea and lentil industry that were attended by pea and lentil producers, processors, and domestic and export merchandisers as well as representatives of FGIS. It was the consensus of industry members attending these discussions that the current U.S. Standards for Whole Dry Peas and the U.S. Standards for Split Peas are meeting the needs of the pea industry and no changes are needed at this time. However, industry representatives recommended revisions to the U.S. Standards for Lentils to establish in the lentil grade requirements (§ 68.607) the factor of skinned lentils. Skinned lentils are defined in the standards as lentils from which three-fourths or more of the seedcoat has been removed (§ 68.601(l)).

FGIS studies of the percentages of skinned lentils found in the 1985 crop year, determined that the average

percentage of skinned lentils was 1.01 percent based on 150 samples. Four of the samples examined exceeded 4.0 percent skinned lentils, three samples exceeded 7.0 percent, and the range of skinned lentils was from 0.0 to 11.2 percent. The results of this study support the industry recommendations for new limits for skinned lentils in the grade requirements. FGIS determined that this change would facilitate the marketing of lentils.

One comment was received, on the proposed change, from the American Dry Pea and Lentil Association. The Association supported the proposed revision to the U.S. Standards for Lentils, as corrected (51 FR 32924) and concurred with the proposed no change to the U.S. Standards for Whole Dry Peas and the U.S. Standards for Split Peas.

Accordingly, based on information available, including the results of the FGIS study, and recommendations and comment received from the industry, FGIS has determined that the U.S. Standards for Lentils which appear at 7 CFR 68.601–68.611 are revised to include grade limits for skinned lentils under § 68.607 *Grades and grade requirements for dockage-free lentils.* In addition, § 68.607, the requirement for sample grade regarding skinned lentils which is designated as § 68.607(d) is removed. Further, FGIS has determined that no changes should be made to the U.S. Standards for Whole Dry Peas which appear at 7 CFR 68.401–68.410 and the U.S. Standards for Split Peas which appear at 7 CFR 68.501–68.510.

List of Subjects in 7 CFR Part 68

Administrative practice and procedures, Agricultural commodities, and Export.

PART 68—[AMENDED]

Accordingly, 7 CFR Part 68 is amended as follows:

1. The authority citation for Part 68 is revised to read as follows:

Authority: Secs. 203, 205, Agricultural Marketing Act of 1946 (7 U.S.C. 1622, 1624).

2. Section 68.607 is revised to read as follows:

§ 68.607 Grades and grade requirements for dockage-free lentils. (See also § 68.609.)

Grade	Maximum limits of—					Skinned lentils (percent)	Minimum requirements—color
	Defective lentils			Foreign material			
	Total (percent)	Weevil-damaged lentils (percent)	Heat-damaged lentils (percent)	Total (percent)	Stones (percent)		
U.S. No. 1	2.0	0.3	0.2	0.2	0.1	4.0	Good
U.S. No. 2	3.5	.8	.5	.5	.2	7.0	Fair

U.S. Sample grade: U.S. Sample grade shall be lentils which—
(a) Do not meet the requirements for the grades U.S. Nos. 1 or 2; or
(b) Contain more than 14.0 percent moisture, live weevils or other live insects, metal fragments, broken glass, or a commercially objectionable odor; or
(c) Are materially weathered, heating, or distinctly low quality.

Dated: October 24, 1986.

John W. Marshall,

Acting Administrator.

[FR Doc. 86–24974 Filed 11–4–86; 8:45 am]

BILLING CODE 3410-EN-M

Agricultural Marketing Service

7 CFR Part 989

Raisins Produced From Grapes Grown in California; Amendment to the Weight Adjustment (Moisture) System for Certain Seedless Raisins

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule amends the weight adjustment (moisture) system for certain seedless raisins. Currently, producers who deliver raisins to handlers with moisture levels between 10.0 and 13.9 percent moisture receive a weight credit (bonus tonnage) for such raisins. This action will allow producers to also receive a weight credit for raisins delivered below the 10 percent moisture level, thereby receiving a larger payment for those raisins. This action was unanimously recommended by the Raisin Administrative Committee, which works with the USDA in administering the marketing order.

EFFECTIVE DATE: November 5, 1986.

FOR FURTHER INFORMATION CONTACT: Ronald L. Cioffi, Chief, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, Washington, DC 20250 (202) 447–5697.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed under Executive Order 12291 and Departmental Regulation No. 1512–1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Agricultural Marketing Agreement Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

This action will lower the minimum moisture level allowable for producers to receive a weight credit under the weight adjustment system for Natural (sun-dried) Seedless and Monukka raisins.

It is estimated that 23 handlers of California raisins under the marketing order for raisins produced from grapes grown in California will be subject to regulation during the course of the current season and that the majority of these firms may be classified as small entities. This action will improve handler operations since lower moisture raisins have better packaging and storing characteristics. For most producers, the lowering of the minimum percent will result in increased incentive payments. There is no anticipated adverse economic impact on small entities because this will benefit handlers as well as producers.

A proposed rule on this amendment was published in the **Federal Register** on September 10, 1986 (51 FR 32216)

inviting written comments through September 25, 1986. No comments were received.

This rule is issued under Marketing Order No. 989, as amended (7 CFR Part 989), regulating the handling of raisins produced from grapes grown in California. The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674). It is hereby found that this action will tend to effectuate the declared policy of the Act.

The weight adjustment (moisture) system was established on August 28, 1985 (50 FR 35769) to encourage raisin producers to deliver lower moisture Natural (sun-dried) Seedless and Monukka raisins to handlers (i.e., in the 10 to 14 percent moisture range). The industry has found that high maturity raisins of these varietal types with a moisture level in excess of 14 percent tend to sugar if held in storage for extended periods of time. Sugaring is an undesirable characteristic because the raisins feel gritty, rather than soft and pliable, when eaten. Increasing the storage life of raisins is important to the industry because of the industry's current oversupply situation and the potential for continued levels of overproduction in the immediate future. This situation has resulted in raisins being held for longer periods of time in the industry's reserve pools.

Under the current system, growers delivering lots of raisins to handlers containing 14.1 through 16.0 percent moisture receive a weight dockage, whereas growers delivering raisins with 12.1 through 13.9 percent moisture receive a weight credit of 2 pounds of raisins per ton for each 1/10 percent moisture under 14.0 percent. Raisins with a moisture percentage of 10.0 throught 12.0 percent receive a weight credit of 40 pounds per ton.

The Committee has recommended that the minimum allowable percentage (10.0 percent) to obtain a weight credit be eliminated. Currently, producers who deliver raisins below the 10.0 percent moisture level receive no such weight credit. This change will allow producers to also receive a weight credit for raisins delivered below the 10.0 percent moisture level. Therefore, raisin deliveries with a moisture level of 12.0 percent or lower will receive a weight credit of 40 pounds per ton.

It is further found that is impracticable and contrary to the public interest to postpone the effective date until 30 days after the publication in the Federal Register (5 U.S.C. 553) because raisin producers have already begun deliveries of 1986–87 season raisins and to be of maximum benefit to producers this rule should be in effect as early in the harvest season as possible.

List of Subjects in 7 CFR Part 989

Marketing agreements and orders, Grapes, Raisins, and California.

PART 989—[AMENDED]

1. The authority citation for 7 CFR Part 989 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. Paragraphs (a) and (c) of § 989.211 are revised to read as follows:

Subpart—Supplementary Regulations

§ 989.211 Weight adjustment (moisture) system.

(a) General. Natural (sun-dried) Seedless, and Monukka raisins containing from 14.1 percent through 16.0 percent moisture or 13.9 percent or lower moisture may be acquired by a handler under a weight adjustment system. The creditable weight of each lot of raisins acquired under this adjustment system shall be obtained by multiplying the net weight of the raisins in the lot by the applicable factor prescribed in paragraphs (b) or (c) of this section.

* * * * *

(c) *Adjustment table for Natural (sun-dried) Seedless and Monukka raisins with 13.9 percent moisture or lower:*

Percent moisture	Adjustment factor
14.0	1.000
13.9	1.001
13.8	1.002
13.7	1.003
13.6	1.004
13.5	1.005
13.4	1.006
13.3	1.007
13.2	1.008
13.1	1.009
13.0	1.010
12.9	1.011
12.8	1.012
12.7	1.013
12.6	1.014
12.5	1.015
12.4	1.016
12.3	1.017
12.2	1.018
12.1	1.019
12.0—or lower	1.020

Note.—No adjustment for deliveries at 14 percent moisture.

Dated: October 31, 1986.

Joseph A. Gribbin,

Director, Fruit and Vegetable Division.

[FR Doc. 86–25016 Filed 11–4–86; 8:45 am]

BILLING CODE 3410-02-M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 316a

Residence, Physical Presence and Absence; Application Fee, etc.

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Final rule.

SUMMARY: This final rule revises 8 CFR 316a.21 to correct an obsolete fee to be submitted with application Form N–470. Additionally, this rule makes minor non-substantive editorial corrections.

EFFECTIVE DATE: November 5, 1986.

FOR FURTHER INFORMATION CONTACT:

For General Information: Loretta J. Shogren, Director, Policy Directives and Instructions, Immigration and Naturalization Service, 425 I Street NW., Washington, DC 20536 Telephone: (202) 633–3048

For Specific Information: F. Gerard Heinauer, Senior Immigration Examiner, Immigration and Naturalization Service, 425 I Street NW., Washington, DC 20536 Telephone: (202) 633–5014

SUPPLEMENTARY INFORMATION:

Presently, 8 CFR 316a.21 (a) and (b) quote an incorrect application fee for filing Form N–470. This regulation references the fee specified in § 103.7, and makes minor editorial changes.

Compliance with 5 U.S.C. 553 as to notice of proposed rulemaking and delayed effective date is unnecessary because this rule merely updates the correct application fee for Form N–470, and provides for editorial changes.

In accordance with 5 U.S.C. 605(b), the Commissioner of Immigration and Naturalization certifies that this rule, if promulgated, does not have a significant economic impact on a substantial number of small entities. This rule is not a rule within the meaning of section 1(a) of E.O. 12291 as it relates to administrative practice and procedure.

List of Subjects in 8 CFR Part 316a

Citizenship and naturalization, Immigration and Nationality Act, Residence.

Accordingly, Chapter 1 of Title 8 of the Code of Federal Regulations is amended as follows:

PART 316a—RESIDENCE, PHYSICAL PRESENCE AND ABSENCE

1. The authority citation for Part 316a is revised to read as follows:

Authority: Secs. 103, 316, 317, 332, and 405 of the Immigration and Nationality Act, as amended (8 U.S.C. 1103, 1427, 1428 and 1443).

2. Section 316a.21 is revised as follows:

§ 316a.21 Application for benefits with respect to absences; appeal.

(a) *Preservation of residence under section 316.* An application for the residence benefits of section 316(b) of the Immigration and Nationality Act to cover an absence from the United States for a continuous period of one year or more shall be submitted to the Service on Form N–470 in accordance with the instructions contained therein. The application shall be filed either before or after the applicant's employment commences but before the applicant has been absent from the United States for a continous period of one year. The fee specified in § 103.7 of this title shall be submitted with the application.

(b) *Preservation of residence under section 317.* An application for the residence and physical presence benefits of section 317 of the Immigration and Nationality Act to cover any absences from the United States, whether before or after December 24, 1952, shall be submitted to the Service on Form N–470 in accordance with the instructions contained therein, either before or after the absence from the United States or the performance of the functions or the services described in that section. The fee specified in § 103.7 of this title shall be submitted with the application.

(c) *Approval, denial and appeal.* The applicant shall be notified of the approval of the application on Form N–472 and, if the application is denied, of the reasons therefor and of the right to appeal in accordance with the provisions of Part 103 of this chapter.

(d) *Spouse and unmarried dependents included.* Approval of Form N–470 under section 316(b) of the Act shall cover the spouse and unmarried dependents of the applicant who are residing abroad as members of the applicant's household during the period covered by the application. Form N–472 shall be notated to identify those family members so covered.

Harriet B. Marple,

(Acting) Associate Commissioner, Examinations, Immigration and Naturalization Service.

[FR Doc. 86–24962 Filed 11–4–86; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 92

[Docket No. 84–030]

Treatment of Horses From Countries Affected by CEM; Affirmation of Interim Rule

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Affirmation of interim rule.

SUMMARY: This document affirms, with certain changes, an interim rule which revised the conditions which States must meet in order to receive stallions over 731 days of age imported from countries in which CEM exists. These amendments are necessary to prevent the introduction and dissemination of CEM into the United States.

EFFECTIVE DATE: November 5, 1986.

FOR FURTHER INFORMATION CONTACT: Dr. C.A. Gipson, Program Planning Staff, VS, APHIS, USDA, Room 845, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301–436–8321.

SUPPLEMENTARY INFORMATION:

Background

Section 92.4 of the regulations in 9 CFR Part 92 (referred to as the regulations), among other things, sets forth conditions States must meet to be approved to receive stallions and mares over 731 days of age imported into the United States for permanent entry from countries in which contagious equine metritis (CEM), a contagious disease of horses, exists.

On May 13, 1983, an interim rule was published in the **Federal Register** (48 FR 21549–21553) amending § 92.4 of the regulations by: (1) requiring a State veterinarian to directly supervise treatment of stallions when treatment is performed by an accredited veterinarian; (2) requiring that mares be permanently identified by marking with the letter "T" before they are used as test mares; (3) prohibiting test mares to be used more than once to test stallions; (4) prohibiting the use, as test mares, of mares which were bred to stallions other than those being tested for CEM after specimens were taken or samples drawn to qualify the mares as apparently free from CEM; (5) requiring States to agree to quarantine mares used as test mares until such mares have been released from quarantine in accordance with specified requirements; (6) providing criteria for releasing stallions and test mares from quarantine; (7) requiring the specimens, from stallions be cultured for CEM prior to the animals being treated for CEM; (8) requiring that specimens be dated and allowing tests and cultures to be conducted not only at the National Veterinary Services Laboratories, Ames, Iowa, but also at any other laboratory approved by the Deputy Administrator, Veterinary Services; and (9) giving States the option of whether to have laws or to have regulations requiring specified treatment of stallions for CEM.

The interim rule invited the submission of written comments on or before July 12, 1983. Six comments were received. These comments are discussed below.

Supervision by a State Veterinarian

Prior to the effective date of the interim rule, the regulations provided that in order for a State to be approved to receive stallions over 731 days of age from countries in which CEM exists, a State must require certain treatment of the stallions to be performed by an accredited veterinarian under the monitoring of a State or Federal veterinarian.

The interim rule amended the extent of oversight of the treatment by requiring that the treatment be done under the direct supervision of a State veterinarian. Four commenters addressed this issue. One commenter favored the change; the three other commenters opposed the change. The following assertions were made in opposition to the change:

(1) That accredited veterinarians had been peforming the procedures satisfactorily "under supervision and instruction";

(2) That no evidence was presented that the performance of accredited veterinarians poses an unnecessary risk and that the physical presence of the State veterinarian seems to be "redundant";

(3) That in one commenter's State it would be a near impossibility for the State veterinarian to observe all of the treatment procedures for each stallion entering that State from a CEM country; and

(4) That a State animal health technician, rather than a State veterinarian, could be present when such procedures were performed and that the presence of a State animal health technician would serve the same purpose as the presence of a State veterinarian.

APHIS has carefully considered these comments. APHIS believes that retaining the regulations as amended by the interim rule would be in the best

interests of disease control and of the equine industry in the United States. However, based on these comments and on experience gained since the interim rule was made effective, APHIS has concluded at this time that there are not sufficient qualified personnel available to allow compliance with this requirement. Therefore, until new requirements can be developed and proposed, the regulations are amended to reimplement those regulations in § 92.4(a)(6)(iii)(A) which were in effect immediately prior to the effective date of the interim rule. Those regulations require that the treatment of stallions for CEM be performed by an accredited veterinarian and "monitored" by a State or Federal veterinarian.

Permanent Marking of Test Mares

The interim rule added a new requirement that mares to be used for testing stallions for CEM must be permanently indentified with the letter "T". This marking is to be applied to either the left shoulder or left side of the animal's neck using a hot iron or freezemarking, or tattooed on the animal's lip.

One commenter suggested that a hoof brand could be used in lieu of branding, tattooing, or freezemarking. A hoof brand would be simple and inexpensive and would last 6–8 months. Another commenter objected to the requirement that mares be permanently indentified, based on the assertion that owners of valuable, registered broodmares used as test mares would not tolerate the CEM program if their animals had to be tattooed. The commenter asserted that "registered animals could be identified by their registration papers or registration tattoos already in place. Nonregistered or grade mares could be tattooed. . .". One of the commenters stated that owners of valuable registered broodmares would not allow them to be used for CEM testing if they were tattooed, and that the use of tattoos even on nonregistered or grade mares "inhibits their further use or sale as performance mares." This commenter also suggested that registration papers or registration tattoos already in place on registered animals could be used as identification.

No changes are made in the interim rule based on these comments. As stated in the document of May 13, 1983 (48 FR 21551), "[t]his identification is necessary to aid State officials in determining the identity of mares which must be placed under quarantine" and which may be released only in accordances with the regulations after they are used for CEM testing. The Department reaffirms this rationale. Permanent physical markings which remain for the life of the mare and which clearly identify her as a CEM test mare are necessary to enable State and Federal personnel to easily, quickly, and accurately identify such animals. Occasionally an animal is tested for CEM and incorrectly found to be negative. In addition, attempts are sometimes made to circumvent the regulations. In both of these situations it is imperative that it be known whether or not a mare found to be infected with CEM has been used as a test mare. Her contacts with other equines, including the stallions she was used to test for CEM, can then be traced, and any infection spread by her can be located and prevented from spreading further. Without permanent physical identification, it might not be determined that the mare was once a test mare, and efforts at controlling the spread of CEM could be hampered.

Neither hoof brands, registration tattoos, nor registration papers, all suggested by the commenters as alternative methods, would ensure that such identification could be made. Hoof brands last only 6–8 months and are not permanent markings which remain for the life of the animal. Registration tattoos are permanent, but they do not indicate that the animal has been used for CEM testing. Registration papers are not physically attached to the animal and could therefore become separated from the animal. Also, they do not indicate that the animal has been used for CEM testing.

Release of Mares From Quarantine

The interim rule also amended the regulations to require States to agree to quarantine all mares used to test stallions for CEM. The interim rule further provided the following conditions under which a State may release from quarantine a mare that has been used to test a stallion for CEM:

(i) The mare is found negative for CEM on all cultures and tests required and paragraphs (a)(6)(iii)(C)(*1*), (a)(6)(iii)(C)(*2*), and (a)(6)(iii)(C)(*3*) of § 92.4; or

(ii) The mare is subjected to an ovariectomy by an accredited veterinarian under the direct supervision of a State veterinarian; or

(iii) The mare is treated and handled in accordance with paragraph (a)(9)(iii) of [§ 92.4, which sets forth the treatment and handling necessary to ensure that the mare is not affected with CEM]; or

(iv) The mare is moved directly to slaughter without unloading enroute, is euthanized, or dies.

Three commenters addressed these new provisions. One commenter favored the provisions; the other two commenters opposed them.

One commenter asserted that all of the conditions for releasing a mare from quarantine are cumbersome and expensive and may not contribute to disease control. This commenter further suggested that an ovariectomy will not add to disease control because mares could be induced into heat with drugs.

The other commenter also objected to the option of subjecting the mare to an ovariectomy, based on the assertion that some 'test' mares will accept a stallion whether or not they are in estrus.

No changes are made based on these comments. In the interim rule (48 FR 21551), the Department explained that it believes "each condition under which the mares in question may be released from quarantine will assure that the mare does not disseminate CEM." The Department continued on to state, in connection with each option except number four, the death or slaughter of a mare, that the risk is minimal that an animal which met any of the prescribed conditions would transmit CEM. In connection with option number four, the Department observed that a dead mare or a mare disposed of by euthanizing or moving her directly to slaughter without unloading enroute will not have an opportunity to breed and disseminate CEM. The Department affirms all of these statements.

Regarding the comments that it is possible for a mare which has had an ovariectomy to be willing to breed in spite of that fact and that such animals can be induced chemically into heat, the Department agrees that both of these are possible. However, the Department reaffirms its view that "the risk of the mare disseminating CEM is minimal" when the animal has had an ovariectomy.

The Department is unsure which of the four options for releasing test mares from quarantine was being addressed by the commenter who stated that all mares should be sent to slaughter unless they are identified and go through "the quarantine release procedure." All of the four options require that test mares be identified, and all of the four options are quarantine release procedures, as discussed above. In addition, the Department believes that all of the options offered are effective means of stopping the spread of CEM.

Culture Results From Stallions

The regulations were also amended by the interim rule to require that prior to the treatment of the stallion, various specimens must be taken and cultured for CEM. Three commenters addressed

this issue. One comment was positive. The other comments questioned the need to wait for culture results before treating the stallion.

As stated in the interim rule (48 FR 21550):

* * * This requirement is added for two reasons. First, it will provide this Department information regarding the numbers of stallions and the origins of stallions which are affected with CEM when they enter this country. Present § 92.2(i)(2)(iv) requires that stallions over 731 days of age from countries in which CEM exists must be accompanied by a certificate signed by a salaried veterinary officer of the national government of the country of origin stating that certain specified things were done or not done with respect to the stallion.

Should the information provided by the cultures performed prior to treatment of the stallion in the United States indicate a pattern of CEM affected stallions entering this country from a particular country of origin, the Department will have an opportunity to consult with the national veterinary service of that country in an attempt to remedy any deficiencies which may exist in their treatment of such stallions.

The second reason for adding the requirement that specimens be taken from the stallion and cultured prior to the treatment presently required in § 92.4(a)(6)(iii)(A) is to provide State officials with information regarding the disease status of each stallion to be treated. If a culture indicates that a particular stallion is affected with CEM prior to the stallion being treated, this will enable the State veterinarian supervising such treatment and the accredited veterinarian performing such treatment to be particularly conscientious with respect to the treatment required in § 92.4(a)(6)(iii)(A). It should be noted however, that the treatment required by § 92.4(a)(6)(iii)(A) is required no matter what results are obtained by culturing the specimens taken prior to treatment.

Neither culturing nor test breeding are completely accurate methods of identifying infected animals, although they are the best methods available. It is therefore vital for veterinarians to have as much information as possible concerning the horse they are treating. As stated in the interim rule, this information will enable "the accredited veterinarian performing such treatment to be particularly conscientious with respect to the treatment . . .". All possible steps to ensure that the animal is free of CEM can then be taken before the animal is test bred. In this way the chances of detecting and successfully treating all CEM-affected animals are maximized. For these reasons no changes are made based on these comments.

Reuse of Test Mares

The document of May 13, 1983, also amended the regulations to prohibit the use of mares for test breeding stallions when the mares have been previously used to test stallions for CEM. Four comments addressed this issue. One comment supported the regulation in its entirety. Three commenters asserted that a total prohibition on the reuse of mares for CEM test breeding was not needed.

One commenter appeared to state that the reuse of test mares did not need to be prohibited because there was virtually no chance that stallions would not have been properly "scrubbed to rid them of CEM." The same commenter continued to say that it is "difficult to find test mares that have healthy reproductive tracts" and that candidate mares often have subclinical infections which preclude their use as test mares. Another commenter stated that he was in favor of prohibiting the immediate reuse of test mares, but that a month or two months between uses would be adequate if the mares passed the required two weeks of prebreeding cultures and tests for CEM prior to each use as a test mare. The final commenter stated that mares could be reused 60 days after breeding, and suggested that the regulations be amended to provide that test mares "may be reused for test purposes provided they are maintained under quarantine and used for test purposes only", and to provide that upon completion of testing such mares may be released from quarantine only in accordance with the regulations.

The rationale for prohibiting the reuse of test mares was stated in the document of May 13, 1983 (48 FR 21551) as follows: (1) To ensure that the mares used to test the stallion for CEM were not affected with CEM prior to being used to test the stallion; (2) to prevent the possible spread of CEM to stallions by test mares; and (3) to provide "a more reliable indication of the source of infection" if a test mare is found after test breeding to be infected with CEM.

After carefully reviewing these comments, the Department has determined that this section of the regulations should be amended to allow the reuse of test mares. The Department agrees that it is difficult to locate suitable test mares. The Department also concludes that mares previously used for test breeding are no more likely to be infected with CEM than mares from the general horse population, because they are subjected to qualifying cultures and tests prior to test breeding, are quarantined after breeding, and are released only in accordance with the regulations. Therefore, § 92.4(a)(6)(iii)(B)(*2*) of the regulations is amended to delete the prohibition on reuse of test mares.

Miscellaneous

Section 92.4(a)(6)(iii)(E)(*1*) of the regulations contains provisions concerning laboratories which may conduct CEM tests and cultures, including the approval or withdrawal of approval of laboratories. The section also contains provisions governing the handling and identification of specimens submitted to such laboratories for CEM tests and cultures.

This final rule contains nonsubstantive changes to clarify that the procedures for approval and withdrawal of approval of laboratories to conduct CEM tests and cultures are the same whether the laboratory is handling specimens from mares or from stallions, and to clarify that specimens taken from both mares and stallions for CEM cultures must be handled and identified in the same manner.

In addition, this final rule contains nonsubstantive changes for the purposes of clarity.

Executive Order 12291 and Regulatory Flexibility Act

This action has been reviewed in conformance with Executive Order 12291 and has been determined to be not a major rule. Based on information compiled by the Department, it has been determined that this action will not result in a significant annual effect on the economy; will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and will not have any adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities. This rule will affect only those importers interested in importing stallions from countries in which CEM exists. It is anticipated that approximately 91 such stallions will be imported during calendar year 1986. This compares with approximately 40,653 horses of all classes imported into the United States in fiscal year 1985.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to the provisions of Executive Order 12372, which requires intergovernmental

consultation with State and local officials. (See 7 CFR Part 3015, Subpart V).

List of Subjects in 9 CFR Part 92

Animal diseases, Canada, Imports, Livestock and livestock products, Mexico, Poultry and poultry products, Quarantine, Transportation, Wildlife.

Accordingly, it has been determined that the rule should remain effective as published in the **Federal Register** on May 3, 1983, except as follows:

PART 92—IMPORTATION OF CERTAIN ANIMALS AND POULTRY AND CERTAIN ANIMAL AND POULTRY PRODUCTS; INSPECTION AND OTHER REQUIREMENTS FOR CERTAIN MEANS OF CONVEYANCE AND SHIPPING CONTAINERS THEREON

1. The authority citation for Part 92 continues to read as follows:

Authority: 7 U.S.C. 1622; 19 U.S.C. 1306; 21 U.S.C. 102–105, 111, 134a, 134b, 134c, 134d, 134f, and 135; 7 CFR 2.17, 2.51, and 371.2(d).

2. In § 92.4, paragraph (a)(6)(iii)(A) is amended to change "by an accredited veterinarian under the direct supervision of a State veterinarian" to "under the monitoring of a State or Federal veterinarian and performed by an accredited veterinarian."

3. In § 92.4, paragraphs (a)(6)(iii)(B) (*1*) and (*2*) are revised to read as follows:

§ 92.4 [Amended]

(a) * * *
(6) * * *
(iii) * * *

(B)(*1*) *Identification of test mares.* Mares to be used to test stallions for CEM shall be permanently identified before the mares are used for such testing with the letter "T." The marking shall be permanently applied by an inspector, a State inspector, or an accredited veterinarian who shall use a hot iron, freezemarking, or a lip tattoo. If a hot iron or freezemarking is used, the marking shall not be less than two inches high and shall be applied to the left shoulder or left side of the neck of the mare. If a lip tattoo is used, the marking shall not be less than one inch high and three-fourths of an inch wide and shall be applied to the inside surface of the upper lip of the mare.

(*2*) After a period of seven days following the fifth consecutive day of scrubbing and packing required in paragraph (a)(6)(iii)(A) of this section, the stallion shall be bred to two mares which are qualified prior to breeding as apparently free from CEM and which have not been bred from the time specimens were taken from the mares to qualify the mares as apparently free from CEM. To qualify as apparently free from CEM, each mare shall be tested with negative results by a complement fixation (CF) test for CEM, and specimens taken from each mare shall be cultured negative for CEM. For culture, one specimen each shall be collected during estrus from the endometrium of the uterus, clitoral sinuses and clitoral fossa. After an interval of not less than seven days, one specimen each shall be collected from the cervix, clitoral sinuses, and clitoral fossa.

* * * * *

4. In § 92.4(a), paragrah (6)(iii)(E) is redesignated paragraph (a)(10), and paragraphs (6)(iii)(E)(*1*), (6)(iii)(E)(*2*), (6)(iii)(E)(*3*), (6)(iii)(E)(*4*)(*i*), and (6)(iii)(E)(*4*)(*ii*) are redesignated paragraphs (10)(i), (10)(ii), (10)(iii), (10)(iv)(A), and (10)(iv)(B), respectively.

5. In § 92.4, new paragraph (a)(10)(i) is revised to read as follows:

(a) * * *

(10)(i) All tests and cultures required by paragraphs (a)(6) and (a)(9) of this section shall be conducted at the National Veterinary Services Laboratories, Ames, Iowa, or at a laboratory approved by the Deputy Administrator, Veterinary Services, to conduct CEM cultures and tests.

* * * * *

Done at Washington, DC, this 31st day of October 1986.

J.K. Atwell,

Deputy Administrator, Veterinary Services.

[FR Doc. 86–25018 Filed 11–4–86; 8:45 am]
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FEDERAL HOME LOAN BANK BOARD

[No. 86–1156]

12 CFR Parts 543, 546, 552, 562, 563, 563b and 574

Conversions From Mutual to Stock Form and Acquisitions of Control of Insured Institutions

October 17, 1986.

AGENCY: Federal Home Loan Bank Board.

ACTION: Final rule.

SUMMARY: The Federal Home Loan Bank Board ("Board") is amending its regulations governing mutual-to-stock conversions of insured institutions. Through these amendments, the Board intends to encourage mutual insured institutions to undertake standard conversions and to enable more institutions that fail to meet their regulatory capital requirements or are insolvent to convert to stock form and raise new capital using the modified and voluntary supervisory conversion procedures. The amendments also, (1) provide increased protection to newly converted institutions from changes in control that may disrupt the transition into the stock form of ownership and the prudent deployment of conversion proceeds, (2) clarify issues relating to stock purchases by management of converting institutions in conversions and thereafter, (3) provide additional incentives for insured institutions and other acquirers to participate in merger conversions with insolvent institutions, (4) make more attractive the voluntary supervisory and modified conversion procedures to management of insured institutions and potential acquirers, and (5) enhance the efficiency of processing of modified and voluntary supervisory conversion applications.

The Board also is amending its regulations governing acquisition of control of insured institutions in order to conform provisions of those rules to changes in the Conversion Regulations.

EFFECTIVE DATE: November 5, 1986. These amendments will apply to all conversion applications filed on or after November 5, 1986.

FOR FURTHER INFORMATION CONTACT: Dean V. Shahinian, Attorney, (202) 377–7289; J. Larry Fleck, Associate General Counsel for Conversions, (202) 377–6413; or Julie L. Williams, Deputy General Counsel, Director, (202) 377–6459; Corporate and Securities Division, Office of General Counsel, Federal Home Loan Bank Board, 1700 G Street NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION:

I. Background

A. General

The Board, as the operating head of the Corporation, has broad authority to authorize mutual-to-stock conversions of insured institutions under sections 5(i) (1) and (2) of the Home Owners' Loan Act of 1933 ("HOLA"), 12 U.S.C. 1464(i) (1), (2) (1982), and section 402(j) of the National Housing Act ("NHA"), 12 U.S.C. 1725(j) (1982). Sections 5(i) (1) and (2) provide that, subject to the rules and regulations of the Board, any institution which is, or is eligible to become, a Federal Home Loan Bank ("FHLB") member may convert itself into a federal savings and loan association or federal savings bank, and simultaneously or subsequently may convert from mutual to stock form; and that any federally chartered association may convert from the mutual to stock form of organization.

Section 402(j) of the NHA provides that mutual insured institutions may convert to federally or state-chartered stock form only in accordance with the rules and regulations of the Board.

Section 121 of the Garn-St Germain Depository Institutions Act of 1982 ("Garn-St Germain Act"), which added paragraph (p) to section 5 of the HOLA, 12 U.S.C. 1464(p) (1982), enhanced the Board's conversion authority under sections 5(i) (1) and (2) of the HOLA and section 402(j) of the NHA. Section 121 of the Garn-St Germain Act empowered the Board in certain circumstances to preempt other provisions of federal and state law in order to authorize and, in the case of a federally chartered insured institution, to require the conversion of a FSLIC-insured savings and loan association or savings bank, from mutual to federal stock form; or to charter a federal stock savings and loan association or federal stock savings bank to acquire the assets of, or merge with, a mutual institution under the rules and regulations of the Board. The Board's conversion authority under section 5(p) of the HOLA arises only if (1) the institution is in receivership, (2) the Corporation has contracted to provide assistance to the institution under section 406 of the NHA, or (3) the Board has determined that severe financial conditions exist which threaten the stability of the institution and that such authorization is likely to improve the financial condition of the institution.

Section 5(p) expired July 15, 1986, Pub. L. No. 99–278, 100 Stat. 397 (1986) and has been reinstated for brief intervals since that time. The Board has urged the Congress to restore this and several other sections which provide important emergency acquisition authority for the Board, and certain amendments are being adopted in the hope that section 5(p) eventually will be restored. Of course, the Board will not act under any regulation or portion thereof whose sole basis was section 5(p) unless, and until, the section is reenacted. The Board notes, however, that while section 5(p) has been an extremely valuable tool, the absence of section 5(p) will not preclude the Board from acting on voluntary conversions. Section 5(i) of the HOLA provides an independent basis for the Board's authority to regulate all types of conversions where the resulting entity is federally chartered, provided that no preemption is required and that the transaction is voluntary on the part of the institution. The Board's authority over conversions of state-chartered institutions pursuant to section 402(j) of the NHA also remains intact.

Part 563b of the Rules and Regulations for the Federal Savings and Loan Insurance Corporation (the "Conversion Regulations"), 12 CFR Part 563b (1986), sets forth the requirements for conversion from mutual-to-stock form of federally-chartered and FSLIC-insured institutions. The Conversion Regulations were promulgated and have been amended by the Board over the years in order to implement the Board's comprehensive conversion authority under sections 5(i) (1) and (2) of HOLA, section 402(j) of NHA, as well as 5(p) of HOLA. The Conversion Regulations today provide for three basic types of conversions of insured institutions from the mutual to the stock form of organization: standard, voluntary supervisory, and modified conversions. Subpart A of the Conversion Regulations, 12 CFR 563b.1 through 563b.10, establishes the rules and procedures applicable to standard conversions. In a standard conversion, an institution's accountholders and voting members are given the first right to subscribe for conversion stock, followed by a community or public offering of any stock that is unsubscribed. Purchases by directors and officers and their "associates" in the aggregate are limited to between 25 and 35 percent of the total offering, determined on a sliding scale depending upon the asset size of the institution. Generally, no person acting in concert with any associate or group of persons may purchase more than 5% of the conversion stock. Standard conversions must be authorized by vote of a majority of the institution's voting members.

Subpart C of the Conversion Regulations, 12 CFR 563b.20 through 563b.33, specifies the qualifications for and the rules and procedures applicable to voluntary supervisory conversions. Previously, institutions that were insolvent on the basis of regulatory accounting principles or were projected to be so within 12 months, would be eligible to undertake a voluntary supervisory conversion. Upon a determination that there was no realizable equity value remaining for the mutual members, the substantive and procedural rights granted to the members in converting mutual insured institutions by the Board's standard conversion rules under Subpart A were eliminated. Accordingly, the members of the insured institution converting to stock form on a voluntary supervisory basis were not afforded rights of approval or participation, and upon completion of the conversion had no continuing legal or beneficial ownership interest in the converted insured institution. Previously, in order for the Board to authorize a voluntary supervisory conversion, an insured institution had to satisfy all of the following criteria, which were set forth in section 563b.23 of Subpart C: (1) As to a federally-chartered insured institution, the Board had the power to appoint a receiver for the purpose of liquidation, or, as to a state-chartered insured institution, the Board would have the power to appoint a receiver for the purpose of liquidation were the institution federally-chartered; (2) upon liquidation, there would be no equity value realizable by the mutual accountholders; (3) the insured institution was in receivership, or the Corporation had contracted to provide assistance to the insured institution under section 406 of the NHA, or the Board had determined that severe financial conditions existed which threatened the financial condition of the insured institution; and (4) the insured institution would have been a viable entity under § 563b.26 of Subpart C following the conversion.

Subpart D of the Conversion Regulations provides guidelines for modified conversions. Modified conversions generally are available to institutions that fail to meet their regulatory capital requirement, but do not "qualify" for a voluntary supervisory conversion, and that demonstrate that they would be unable to sell their stock in a standard conversion. In a modified conversion, the substantive and procedural rights granted to members of mutual institutions converting under Subpart A are limited but not eliminated. Modified conversions may be effected without the approval of members, but must involve sales of conversion stock at an aggregate price in excess of the *pro forma* market value of the institution as determined by an independent appraiser, and provide for members' preemptive rights to purchase conversion stock, but subject to limitations.

Pursuant to § 563b.36(a), an insured institution must meet one of the three previously described conditions derived from section 5(p)(2) of the HOLA in order to qualify for Board authorization of a modified conversion. The Board has established the following criteria under § 563b.36(c) of Subpart D for determining the existence of the severe financial conditions portion of such test: (1) Failure of the institution to meet its regulatory capital requirement; (2) insufficiency of current and projected income from operations to restore and maintain the institution's regulatorily required capital; and (3) a

demonstration that a standard conversion would not be feasible.

The Board considers the mutual-to-stock conversion process an extremely valuable structural option available to savings institutions today. Mutual-to-stock conversions infuse new capital into insured institutions, provide an opportunity for needed portfolio restructuring and may enable institutions to compete successfully in the modern financial marketplace. Since the advent of the Board's mutual-to-stock conversion program in the mid-1970's, the aggregate amount of new capital raised through conversions now exceeds $7 billion, with approximately $6.5 billion being raised in the past three and one-half years. The conversion process also increases an institution's capital without requiring an institution to rely on increased earnings. Therefore, mutual-to-stock conversions represent a desirable means for increasing capital in the industry, and constitute a valuable tool to enable institutions to meet their regulatory capital requirements.

B. Summary of Current Proposal

Revisions to Subpart A of the Conversion Regulations relate to the purchases of stock by management, employees and various types of employee stock benefit plans in the conversion and thereafter. In addition, stock institutions that undertake merger conversions with insolvent institutions will be afforded added post-conversion anti-takeover protection derived from the converting insured institutions. The duration of such protection will depend upon the asset size of the converting insolvent institution and, potentially, other factors. The amendments also attempt to facilitate merger conversions by providing an exception to the aggregate conversion stock purchase limitations applicable to officers and directors of the existing insured stock institution and their associates in merger conversions.

The amendments define the term "acting in concert," as used in the conversion stock purchase limitations, and clarify that the rebuttable presumptions of concerted action set forth in § 574.4(d) of the Board's Acquisitions of Control Regulations apply to conversion stock purchases by any person together with any associate or group of persons acting in concert. Certain amendments also are being made to the regulations dealing with the liquidation account established by converted institutions in order to clarify the transferability of such account if the converted institution merges, dissolves into, or is otherwise absorbed by another institution.

The amendments to Subparts C and D of the Conversion Regulations effect a major change in the criteria used by the Board to determine whether an insured institution is in such severe financial condition as to qualify for voluntary supervisory or modified conversion. The new tests use a calculation based upon generally accepted accounting principles ("GAAP") rather than regulatory accounting principles ("RAP") for standards of insolvency or regulatory capital compliance in the case of both voluntary supervisory and modified conversions, and, in the case of voluntary supervisory conversions, provide an alternative approach for satisfying the requirement for the amount of capital that must be infused in the conversion. The tests for determining whether an institution qualifies for a voluntary supervisory or modified conversion are being substantially simplified to easily ascertainable objective standards of financial condition and specified legal structural requirements. Another revision involves delegating the authority to approve certain types of voluntary supervisory conversions to the Board's Office of General Counsel ("OGC"), as is now the case with standard and modified conversions, except in cases involving a significant issue of policy. Various components of supervisory and modified conversions, such as a business plan, are subject to approval by the appropriate FHLB and/or the Office of Regulatory Policy, Oversight and Supervision ("ORPOS"). Authority to approve holding company applications and change in control notices that accompany voluntary supervisory and modified conversions continues to be delegated to be appropriate FHLB, or to ORPOS with the concurrence of OGC, in accordance with the delegation standards set forth in § 574.8 of the Board's Acquisitions of Control Regulations.

Finally, the Board also is amending its Acquisitions of Control Regulations to conform with certain revisions to the Conversion Regulations.

C. Summary of Comments

The Board received eleven public comments in response to its proposal. Three of the comments were received from savings and loan associations; one from a bank; two from law firms which practice savings and loan and banking law; three from trade associations, including a national savings and loan trade association, a state savings and loan trade association and a state banking trade association; and two from government agencies, including a state comptroller.

Commentators agreed that the conversion procedure is an effective means of raising capital for savings institutions and should be promoted and concurred in the objectives of strengthening the savings and loan industry.

Six commentators discussed the proposal to revise § 563b.3(i)(6) to require a prospective acquirer of a recently converted institution to demonstrate that a proposed acquisition would benefit the institution, its depositors, and the FSLIC. A national trade association supported the proposal and stated that the added standard would prevent needless diversion of the institution's energies and proceeds during the critical three years following conversion. The trade association believed it would prevent an institution from being used as a tool to achieve a short-term objective, but rather would enhance the institution's long-term viability. The commenter also urged the addition of specific sanctions for violating the antitakeover or purchase restrictions, that violators should be subject to injunctive proceedings and all their shares should be "sterilized," or stripped of voting rights. The commenter further advocated that the regulation state that the converting institution has a private right of action against an acquirer that violates the post-conversion acquisition restrictions. A state thrift association also endorsed the proposal as an attractive vehicle for making ailing thrifts more desirable.

On the other hand, a bank felt the added criterion was unduly restrictive and had no basis under the Board's authority and that the current criteria were adequate and appropriate to prevent undersirable acquisitions. A trade association representing banks in the same state objected that it would be improper to require that transactions must benefit specific groups in order to obtain approval. The bank trade association added that the new standard would be so difficult to meet that it would effectively prohibit the acquisition of healthy savings and loans. The trade association suggested the adoption of an alternative requirement, that the applicant show that its plans will not disrupt the efforts to adjust to reorganization or deploy the conversion proceeds. The Comptroller of the same state objected that the requirement was not directly related to the objective of encouraging more insured institutions to convert, and could impose an insurmountable barrier to an acquisition proposal that may have demonstrable benefits. The Comptroller added that

current criteria provide adequate authority for the Board to prevent acquisitions that would disrupt the reorganization.

A federal agency also criticized the beneficial effect criterion and questioned whether the Board had identified the specific problems to be alleviated or had explained why existing restrictions were insufficient protection for recently converted institutions. The agency also believed that the Board's present rules were sufficient to allow it to prohibit thrift acquisitions that might harm the public, and that any additional protection should come through shareholder approved charter provisions. The agency felt that this provision would essentially preclude takeovers, depress share price, and operate contrary to certain public policies. The agency also questioned the extension of antitakeover protection resulting from merger conversions to institutions or their parents companies proposed in section 563b.10, and stated that the protection was unwarranted and excessive, no clear evidence showed its necessity and therefore it should not be adopted. The agency criticized the Board for creating a sanctuary for any firm fearing a takeover bid, and stated that the notice does not indicate that the Board had considered alternative approaches.

Another commentator, the national trade association, commented on and supported the amendment of § 563b.3(i)(3) to include within the scope of the rule the holding of revocable and irrevocable proxies under specified circumstances because the commenter agreed that these holders potentially can exert control over the association.

Two commentators, the national trade association and a law firm, commented on and supported the amendments regarding the exemptions on aggregating purchases by employee stock ownership plans and individual officers and directors. The law firm noted that the amendments would be useful in providing management of converting associations with appropriate incentives.

Two commentators, the national and state thrift trade associations, commented on and praised the amendment allowing a converting association to permit any number of a separate tax-qualified employee stock benefit plans to purchase an aggregate of 10 percent of the stock offered in the conversion. The state thrift trade association predicted that this will motivate management and employees of a converting institution with such employee plans to greater productivity and effectiveness. The national thrift trade association noted that the amendments will be beneficial in encouraging employee participation in growth and providing antitakeover protection. It found these amendments consistent with Board objectives for infusing capital into the industry and with Congressional purposes.

One commentator, a law firm, commented on and expressed concern about prohibiting associations from guaranteeing loans or making binding commitments to fund employee stock option plans ("ESOPs"), in § 563b.3(c)(24) because the commentator felt that such a commitment would be necessary to persuade unaffiliated lenders to make loans to ESOPs. It suggested that the Board permit associations with net worth above 6% of total liabilities to either guarantee loans or to pledge as supplementary collateral for a loan to its ESOP government securities equal to 50% of the loan.

One commentator, the national thrift trade association, commented on and commended the Board's innovation and initiative involving the amendments governing media disclosure during the conversion process.

Regarding the clarification of the meaning of "complete liquidation" in connection with a liquidation account, one commentator, a law firm, agreed that a merger with another FSLIC-insured institution should not be considered a "complete liquidation." However, four commentators urged that a merger into or acquisition by a Federal Deposit Insurance Corporation ("FDIC")-insured bank also be treated as not constituting a complete liquidation. The law firm noted that accountholders would receive comparable protection from the FDIC, and predicted that the uncertainty at the time of conversion with respect to the possibility of future acquisitions would have an adverse effect on the market value of the stock. The law firm asked that the Board provide more definitive standards for determining whether a transaction constitutes a complete liquidation and stated that any transaction in which the deposit liabilities of the institution are assumed by a federally-insured institution should be excluded. A bank complained that the Board's proposal equating "complete liquidation" with merger or consolidation was contrary to common usuage and that no legitimate regulatory purpose would be served by authorizing the payout of a liquidation account where an institution is acquired by an FDIC-insured institution. The bank felt that a payout would be a windfall resulting from the conversion, and also could conflict with state statutes which promote cross-industry transactions. The bank argued that an FDIC-insured institution acquisition should be treated the same as an acquisition by a FSLIC-insured institution, because the financial strength of the institution, not the type of deposit insurance, determines the protection afforded liquidation account holders. The bank asserted that the proposal could impede the acquisition of converted institutions by bank holding companies and converted banks if such acquisitions trigger payout of liquidation accounts. This would reduce corporate alternatives and adversely impact the stock prices of newly-converted institutions. It concluded that no additional regulation was needed.

The state banking agency expressed concern that the proposed amendments to §563b.3(f)(3) created a potential for uncertain application of the regulation, and suggested that this proposal confused rather than settled the liquidation account issue. It noted that the prospect that a consolidation between a FSLIC-insured and a non-FSLIC insured institution may be deemed a "complete liquidation" requiring a liquidation account payout could create a substantial economic disincentive to such transactions, and urged the Board to proceed cautiously.

The state banking trade association stated the rule could discriminate against potential bank acquirers and certain depositors by raising the cost of acquisitions through requiring payout of the liquidation account which a FSLIC-insured or non-financial institution acquirer would not have to do. The comment urged the Board to define the scope of its discretion and to state if it does not intend to discriminate against banks or, if it would be discriminatory, not to adopt the provision.

One commentator, a bank, noted that the proposal did not indicate when the amendments, if they were adopted, would become effective, and commented that they should become applicable only with respect to institutions that either adopt plans of conversion or complete their conversions after the amendments were adopted but not apply to those which have already filed.

One commentator, a law firm, commended the Board for proposing to allow a converting institution that has sold all of its conversion shares through subscription to pay the underwriter a consulting fee, because such a fee provides an incentive for investment bankers to assist thrifts in raising capital. The firm expressed concern under this provision that the Board would determine what constituted a

"reasonable fee" and suggested that the Board be permitted to veto only a fee that is unfair and grossly excessive.

One commentator, a state thrift trade association, commented on and approved the use of generally accepted accounting principles in determining whether a thrift qualifies for a voluntary supervisory conversion.

Another commentator, the national thrift association, commented on and supported the new viability tests for supervisory conversions and found them to be sound and flexible. The state thrift association agreed with one of the alternative viability standards, a five-year phase-in (while questioning the potential severity of the sanctions for failure to comply), but observed that the other alternative, the infusion of new capital to raise net worth to 4.5%, might be excessive. The national thrift association suggested that the Board consider the inclusion of debt used to leverage ESOPs as a part of net worth for purposes of the viability test.

One commentator, the national trade association, commented that it supported the proposed liberalization of the merger conversion rules, in order to provide strong management incentives in terms of stock ownership and antitakeover protection.

One commentator, a thrift, commented that the rules for calculating net worth should be modified to permit the inclusion of projected proceeds from the sale of conversion stock in the financials prepared prior to and distributed in the conversion.

One commentator, a thrift, encouraged the Board to allow management to make substantial purchases in the conversion and commented that smaller rural institutions will not attract competent management to devote their full-time and energies to thrift administration unless such people can buy enough stock in the financial institution to control their destiny. This commenter recommended that management be permitted to buy majority control of 51% or more in the institution. He also commented on the need for permitting simplified plans of conversion.

Revisions to Subpart A

A. Introduction

The Conversion Regulations reflect an extended effort on the part of the Board to develop a conversion procedure that is equitable to accountholders and insured institutions and which functions effectively as a capital-raising tool. Since their adoption, the Board has refined the Conversion Regulations periodically in light of its experience with the conversion process and in response to developments in the marketplace, in order to facilitate the standard conversion procedure and enhance its use by insured institutions.

The Board has once again reviewed the standard conversion process to determine the measures that would encourage more insured institutions to convert to stock form and induce stock institutions to undertake transactions involving the mutual-to-stock conversion of insolvent institutions. The Board believes that it has identified several provisions of Subpart A of the Conversion Regulations that it can revise to achieve the above-described goals without conflicting with the guiding equitable principles of the conversion process and the assurance to insured institutions that such procedures can withstand judicial scrutiny. *See York* v. *Federal Home Loan Bank Board,* 624 F. 2d 495 (4th Cir.), *cert. denied,* 449 U.S. 1043 (1980).

B. Anti-Takeover Provisions

The Board has reviewed its position regarding the adoption by converting insured institutions of charter provisions that generally make more difficult the acquisition of controlling interests of the institution's stock. Section 563b.3(i)(7) currently allows a converting or newly converted institution to include in its stock charter, for a specified period of time after conversion not to exceed five years, any or all of the provisions specified in § 552.4(b)(8). The full availability of these charter provisions to state-chartered insured institutions will depend upon state law.

Section 552.4(b)(8) authorizes federal institutions for a specified period to eliminate cumulative voting, limit the right of shareholders to call special meetings of shareholders relating to changes in control or to amending the converted institution's charter, and, most fundamentally, to restrict the acquisition of more than 10 percent of the converted institution's stock. Following conversion, a state-chartered insured institution may adopt any anti-takeover charter provision that would be permitted to be adopted by an institution chartered by the state in which the converted institution is chartered, and a federally chartered insured institution may adopt any such charter provision permitted under § 552.4 of this chapter. Section 552.4 currently employs a state law standard of reference for determining the permissibility of anti-takeover charter provisions for federal associations.

The Board notes that the charter provisions that currently may be adopted at the time of conversion are extensive and afford substantial protection against changes in control to converting and newly converted institutions. One commenter in fact noted the usefulness of § 563b.3(i)(7) in protecting recently converted institutions against hostile takeovers. The Board also is concerned that extending the maximum time period that these anti-takeover provisions may remain in effect without shareholder ratification beyond five years could harm the institution's ability to market its conversion stock, reduce the amount of capital raised in the conversion and reduce the liquidity of the institution's stock after conversion. The Board also is aware that institutions that want to maintain the antitakeover charter amendments for a period of time longer than five years generally have been able to do so after submitting the provisions to their shareholders for a vote.

In view of the other amendments adopted by the Board which provide an increased measure of anti-takeover protection for converting and recently converted institutions, the Board has weighed the need for further changes in this area and has determined at this time not to adopt any amendment to § 563b.3(i)(7).

C. Restrictions on Offers to Acquire and Acquisitions of Converted Institutions

Section 563b.3(i)(3) of the Conversion Regulations prohibits, for a period of 3 years following the date of the completion of an insured institution's conversion, any person, directly or indirectly, from offering to acquire or acquiring the beneficial ownership of more than 10 percent of any class of the institution's equity securities without the prior written approval of the Board. Section 563b.3(i)(6) sets forth 6 general grounds for the Board to deny an application involving offers to acquire or acquisitions of the securities of converted institutions and generally requires the Board to make a finding that the acquisition would be detrimental to the institution under one or more of those standards in order for the application to be denied.

The Board proposed to revise § 563b.3(i)(6) to require in addition that a prospective acquirer of a recently converted institution affirmatively demonstrate that a proposed acquisition would be beneficial to the converted institution, its depositors, and the FSLIC. By placing the burden on the acquirer to make an affirmative showing regarding the beneficial effects of a proposed acquisition, the Board believed the standard would operate to reasonably ensure that changes in control of newly converted institutions would not disrupt

the institution's efforts to adjust to its reorganization into stock form and prudently deploy its conversion proceeds.

Some commentators endorsed this new standard as a way of protecting the converted institution. However, other commentators felt that the standard was unduly restrictive and unnecessary, and not in the best interest of stockholders. In light of the concerns of the critical commentators and recognizing the urgency with which the other provisions are needed, the Board has reconsidered the proposed beneficial effect test which would be used in determining whether to approve acquisitions of stock in recently converted institutions.

In light of these comments, the Board is modifying the proposal in two respects. The Board has decided, first, to revise the proposed positive benefit test to be used in determining whether to approve acquisitions of recently converted institutions, and second, to clarify and restate the application of the current criteria. In addition, the Board wishes to emphasize that it will closely examine the character, integrity, and experience of potential acquirers to ensure that the acquisition will not be disruptive of prudent operations of the institution and will be consistent with economical home financing. While the fears of takeover on the part of existing mutual institutions may be a reason for not electing to convert, the Board has attempted to balance. this factor against the likely efficiency gains due to at least the possibility of takeovers. The Board also wishes to note, however, that its conversion regulations currently provide significant protections against a hostile takeover for recently converted institutions. The Board will study the need for and potential effects of a requirement to show a beneficial effect in light of its experience with the other newly adopted amendments.

The Board also is amending § 563b.3(i)(3) to include within the scope of the rule the holding of revocable and/or irrevocable proxies under specified circumstances that have been regarded as providing the proxy holder with the potential to exert effective control over significant aspects of an institution's operations and management. The Board has already recognized in the Acquisition of Control Regulations that a holder of proxies can exert the same type of control in matters of shareholder voting as the owner of shares. The inclusion of proxies therefore parallels § 574.4 of the Acquisitions of Control Regulations. The one comment on this item supported this approach. Thus, the holding of revocable and/or irrevocable proxies would be subject to § 563b.3(i)(3) only in the same circumstances that holding of such proxies would give rise to a conclusive or rebuttable control determination under §§ 574.4 (a) and (b), respectively.

D. Purchases by Management, Employees, and Employee Stock Benefit Plans

1. Purchases at the Time of Conversion

a. Introduction. A number of issues have arisen regarding the application of certain provisions of the Conversion Regulations and other regulations to employee stock benefit plans such as ESOPs. An ESOP, for example, is an employee stock benefit plan designed to invest primarily in an employer's stock, principally by using tax-deductible contributions made to the ESOP under the terms of the plan.

The Congress in a series of laws has "made clear its interest in encouraging employee stock ownership plans as a bold and innovative method of strengthening the free enterprise system which will solve the dual problems of securing capital for necessary capital growth and of bringing about stock ownership by all corporate employees." *See* Tax Reform Act of 1976, Pub. L. No. 94–455, 90 Stat. 1580, 1590, Title VIII, section 803(h). In addition, through various other provisions of the Internal Revenue Code ("IRC"), Congress has identified other types of employee stock purchase plans that have public benefits and which have been found to warrant a favorable type of tax treatment (referred to herein as "tax-qualified employee stock benefit plans"). These include certain types of pension plans, profit-sharing plans, stock bonus plans and annuity plans.

The Board is adopting amendments to eliminate uncertainty on a variety of issues presented by employee stock benefit plans and to enhance the ability of officers, directors and employees of an institution to acquire stock when their institution converts, through various types of employee stock benefit vehicles. The Board believes that acquisition of an institution's stock by such plans provides a means for officials and employees of converting institutions to acquire larger ownership stakes in their institutions upon conversion without undermining the basic equities of the conversion process.

b. Definition of "Tax Qualified Employee Stock Benefit Plan". A new paragraph (a)(37) is being added to section 563b.2 to define the terms "tax-qualified employee stock benefit plan" and "non-tax-qualified employee stock benefit plan." A tax-qualified plan will be defined with reference to the types of plans described in section 401 of the IRC. As noted above, this includes types of pension plans, profit-sharing plans, stock bonus plans, and annuity plans. These new definitions clarify the treatment of such plans for the purposes of various restrictions on stock purchases imposed by the Conversion Regulations.

The Board notes that tax-qualified employee stock benefit plans generally must comply with various participation, vesting, distribution, and other rules under the IRC designed to protect the interests of all employees. For example, a plan must be in writing, permanent, communicated to employees, and all provisions essential to qualification must be included in the written plan. The minimum vesting requirements include minimum schedules under which an employee's benefit from employer contributions must accrue and become nonforfeitable and special rules for vesting in the event that the plan is terminated. In addition, these employee stock benefit plans generally must be established for the benefit of employees and meet minimum employee participation standards designed to enhance employee participation and prohibit discrimination in favor of employees who are officers, directors, shareholders, or highly compensated employees. Discrimination in favor of persons other than officers, directors, shareholders, or highly compensated employees, such as rank-and-file employees, is not prohibited, however.

c. Amendment to the Definition of "Associate". The ability of employee stock benefit plans to acquire conversion stock could be substantially effected by the scope of the term "associate." A "associate" of a person previously has been defined under § 563b.2(a)(4) of the Conversion Regulations to include any trust in which a person has a substantial beneficial interest or in which the person serves as a trustee or in a similar fiduciary capacity. Thus, the literal application of § 563b.2(a)(4) would require any employee stock benefit plan that retains an officer or director of the insured institution as a plan trustee or similar fiduciary to be considered an "associate" of each such officer or director (and potentially of more than one officer or director). In addition, if a person were deemed to have a "substantial beneficial interest" in the trust, or even if officers and/or directors as a group were deemed to hold a substantial beneficial interest, the trust would be treated as an "associate" of that person, or of the officers or

directors collectively. Where the trust is treated as an associate of the officers and directors, it becomes subject to the various conversion stock purchase priorities and percentage limitations established in the Conversion Regulations, including limitations on the total number of shares that officers, directors, and their associates may purchase both individually and in the aggregate in the conversion stock offering, and to the restrictions set forth in § 563b.3(c)(9) of the Conversion Regulations on post-conversion stock purchases by officers, directors, and their associates.

The Board believes that the application of the term "associate" to employee stock benefit plans in certain of these contexts is neither necessary nor intended in order to accomplish the purposes of the "associate" definition as used in the Conversion Regulations. Therefore, the Board is amending current § 563b.2(a)(4), redesignated as new § 563b.2(a)(5), to clarify the circumstances when stock held by an employee stock benefit plan will be aggregated with stock purchased by a person or purchased by all officers and directors as a group for purposes of §§ 563b.3 (c)(6), (c)(7), (c)(8), (c)(9), and (d)(5). A distinction is being made between tax-qualified and non-tax-qualified plans. With respect to purchase restrictions that apply to individual purchases, (§§ 563b.3 (c)(6), (c)(7), (c)(9) and (d)(5)), stock held by either a tax-qualified or non-tax-qualified plan would *not* be aggregated to a person who has a substantial beneficial interest in, or serves as a trustee or other fiduciary of the plan. With respect to the aggregate director and officer purchase restrictions, (section 563b.3(c)(8)), however, stock held by a tax-qualified plan would not be counted, but stock held by a *non*-tax-qualified plan and attributable to the institution's directors and officers would be counted for purposes of the aggregate management purchase limits set by that section.

d. Purchases of Stock In the Conversion—(i) Treatment of Tax-Qualified Plans. The amendments adopted today by the Board permit an association to create a conversion plan allowing any number of separate tax-qualified employee stock benefit plans to purchase, in the aggregate, up to ten percent of the stock offered in the conversion. Such a plan may otherwise limit purchases by any other person together with any associate or group of persons acting in concert to a lesser amount than five percent of the total shares offered in the conversion in accordance with existing provisions of the Conversion Regulations. Tax-qualified employee benefit plans also are entitled to purchase up to ten percent of the offering regardless of the number of shares purchased by any other party. Thus, if an offering is over-subscribed, the plan's purchases will not be pro-rated.

Generally, plans must include a broad base of employee beneficiaries in order to meet the definition of a tax-qualified plan. Accordingly, the Board believes that its goal of selling conversion stock in a wide distribution, *see* 12 CFR 563b.3(c)(6)(iii), will not be undermined, even when, for example, an ESOP acquires ten percent of the stock sold in the conversion, because the plan is holding stock for the benefit of employees. However, since employees of the association may also have subscription rights or may desire to purchase stock sold in a community or public offering, the Board is amending other aspects of its conversion regulations, to recognize the independence of the new ten percent tax-qualified employee stock benefit plan purchase provision.

The Conversion Regulations have limited the amount of conversion stock that management officials and their associates may purchase as a group to between 25 and 35 percent of the stock sold in the conversion, depending on the asset size of the converting association, under § 563b.3(c)(8). If the shares purchased by an employee stock benefit plan which were allocable to various employees were attributed to management officials as beneficiaries of such plan, the plan might not be able to purchase a substantial amount of stock without causing management, as a group, to exceed its limitation. (The attribution of these shares, it should be noted, is a separate issue from attribution based upon the definition of "associate," and must be addressed independently.) Accordingly, the Board is excepting purchases by tax-qualified employee stock benefit plans from the aggregate amount that the officers and directors may purchase under § 563b.3(c)(8) of the Conversion Regulations. Section 563b.3(c)(8) also is being revised to include the formula for calculating permitted share purchases. Commentators have supported these amendments as ways of allowing thrifts to provide appropriate management incentives.

In addition to limitations on the purchases by the officers and directors of the association as a group, as already noted, the Conversion Regulations have limited the amount of conversion stock that any person, including individual officers, directors and employees, may purchase. Therefore, the Board also is amending 12 CFR 563b.3 (c)(6), (c)(7), (c)(9) and (d)(5) to provide that shares purchased by employee stock benefit plans—whether or not tax-qualified—that are attributed to an individual employee as a beneficiary of the employee stock benefit plan, will not be aggregated with any conversion shares purchased directly by or otherwise attributable to the individual. However, where shares attributable to one person are held by more than one plan, those shares could be separately aggregated to determine if the conversion stock purchase limits are exceeded. As already discussed as a separate issue, an amendment to the definition of "associate" set forth in section 563b.2(a)(4), would provide that an employee stock benefit plan in which a person has a substantial beneficial interest or serves as a trustee or in a similar fiduciary capacity will not be considered an "associate" of such person for purposes of the purchase limitations of § 563b.3 (c)(6), (c)(7), (c)(9) and (d)(5).

Finally, the Board notes that in order to give an employee stock benefit plan an opportunity to purchase shares in certain conversions, that plan must receive priority subscription rights to purchase conversion stock. It is recognized that the institution's board of directors could obtain a subscription priority status for the employee stock benefit plan under the current conversion regulations merely by opening an account for the employee stock benefit plan with a qualifying balance at the association prior to the eligibility record date. In order to simplify this process, however, the Board is providing in new § 563b.3(c)(23) of the Conversion Regulations an explicit priority for tax-qualified employee stock benefit plans that permits the plan to purchase conversion stock. Thus, tax-qualified employee stock benefit plans are permitted to acquire, in the aggregate, up to ten percent of the total conversion stock offering without proration in the event of oversubscription.

In a related area, the Board notes that many converting institutions have experienced a significant increase in new accounts being opened in the institutions after they have given notice of their impending conversions. Pursuant to § 563b.3(c)(5), these new account holders become voting members in the conversion and thereby receive the same subscription rights as eligible account holders and supplemental

account holders, if applicable, with the exception that they are subordinated to the stock purchase rights of the other account holders. Many converting institutions have advised the Board that these new account holders have disrupted the orderly distribution of their conversion stock and requested that the conversion regulations be revised accordingly. The Board solicited but received no comments on this issue and thus makes no revision to the stock purchase rights of voting members at this time.

(ii) *Treatment of Non-Qualified Plans.* In addition to employee stock benefit plans that receive beneficial tax treatment, associations may desire to devise other benefit plans. Plans that do not qualify for favorable tax treatment ("non-tax-qualified plans") may vary from tax-qualified plans in several ways. For instance, these plans may benefit a limited group of the highest compensated employees. Further, non-tax-qualified plans do not provide the same financial benefits to the association as tax-qualified plans, generally failing to obtain a tax deduction for contributions to the plan. The Board notes, however, that the adoption of non-tax-qualified plans that purchase the association's stock nevertheless may foster certain goals related to the conversion process, such as, for example, enabling the association to retain or attract key employees. Accordingly, the Board is amending the regulations to eliminate the uncertainly of the applicability of the conversion regulations to purchases by these plans.

Because non-tax-qualified plans need not be broad-based among the employees of the association, the Board is not providing special purchase treatment for the amount of conversion stock each non-tax-qualified plan may purchase. A non-tax-qualified plan will be treated no differently than any other person. Further, because a plan could be structured to benefit primarily top management officials, the stock purchased by such plans will be attributable to the officers and directors of the association to the extent that any such management officials are beneficiaries of the plan, but solely for purposes of determining the amount that officers and directors as a group may purchase in the conversion pursuant to § 563b.3(c)(8).

On the other hand, the Board recognizes the potential complexity of individual vesting provisions, which leads to difficulty in fairly attributing precise amounts of stock to specified management officials, as of the time of conversion. Accordingly, the Board is providing that shares attributable to individual beneficiaries of such plans would not be aggregated with shares purchased in the conversion directly by, or otherwise attributable to, such individuals for purposes of §§ 563b.3 (c)(6), (c)(7) and (d)(5). This is the same treatment as discussed above with respect to tax-qualified plans, and it should be noted again that where shares attributable to one person are held by more than one plan, these shares can be separately aggregated to determine if the conversion stock purchase limits are exceeded.

The Board also is not providing non-tax-qualified plans with special subscription rights to purchase conversion stock, but notes that, as in the case of qualified plans, management of the association could obtain a priority subscription right for the plan by qualifying the plan as an eligible accountholder. In the case of a non-tax-qualified plan, however, subscriptions by the plan could be reduced on a pro-rata basis in the same manner as any other subscription, in the event of an oversubscription.

(iii) *Financing Considerations.* A fundamental premise of the Board's conversion process is the raising of new capital for insured institutions. The Board is amending its Conversion Regulations to clarify its position and the role which an association may take in financing the acquisition of conversion stock by an employee stock benefit plan. First, a contribution of any amount of conversion stock to an employee benefit plan for less than full consideration is inconsistent with the fundamental premises of the conversion process. Second, the conversion regulations expressly prohibit the converting association from extending credit to any person, which includes an association's own employee stock benefit plan, for the purpose of purchasing conversion stock, under § 563b.3(i)(22). This requirement also prohibits an association from guaranteeing an extension of credit to an employee stock benefit plan. (Individual stockholders or officials of the association could guarantee such a loan, however.) In addition, although not the subject of these amendments, the Board's conflicts rules would preclude the extension of credit by an insured institution to an employee stock benefit plan where the plan constituted an affiliated person under the Board's regulations. 12 CFR 563.43.

One commentator urged the Board to permit associations with net worth in excess of 6% of total liabilities to either guarantee loans or to pledge government securities for a loan to an employee stock benefit plan because such commitments maybe necessary to obtain loans. The evidence available to the Board does not support the contention that loans cannot be obtained without such pledges and the Board also is reluctant to discriminate in favor of certain institutions in this regard. Since the Board views the primary function of the conversion program as raising capital, and since the conversion process to date has not shown that it is necessary for an institution to finance the funding of employee stock benefit plans, the Board has determined to continue the present ban on contractual financing obligations from an association to an employee stock benefit plan or to a third party lender to the plan in the conversion context.

Nevertheless, the Board also is aware that employee stock benefit plans constitute a useful means of compensating association employees and that such a plan itself is not capable of generating income sufficient to service the debt it may incur to acquire conversion stock. Accordingly, the Board in § 563b.3(c)(24) is permitting plans of conversion in which the association indicates its intent to make certain scheduled contributions to employee stock benefit plans, provided that such contributions are made in the discretion of the association's management.

Of course, plans also must provide for a realistic schedule of payments in light of the historical performance of the association and projected earnings after the conversion. Moreover, management of an association considering the inclusion of employee stock benefit plans in the association's conversion should carefully consider the impact on the capital that may be raised in the conversion of sales of substantial amounts of conversion stock to tax-qualified or non-tax-qualified employee stock benefit plans as well as the financial burdens such a plan may place on the association.

e. Post-Conversion Purchase Restrictions Applicable to Directors and Officers

Section 563b.3(c)(9) restricts on the manner in which officers and directors of a converted institution, and their "associates," may acquire additional stock of the institution. Where a director or officer of the institution serves as a trustee of an employee stock benefit plan (or in a similar fiduciary capacity), or where directors or officers individually or collectively have a

substantial beneficial interest in the plan, the plan would be an "associate" of such persons and thereby subject to the stock purchase constraints applicable to the director or officer. Moreover, attribution of shares to individual officers and directors, pursuant to vesting provisions of a plan, arguably could also be deemed an acquisition of stock within the scope of the rule.

However, consistent with the approach already discussed above of not aggregating employee benefit plans to individual directors or officers for purposes of purchases in the conversion, the Board is further amending the definition of "associate" to provide that, for the purposes of § 563b.3(c)(9), the term "associate" does not include an employee stock benefit plan in which a person has a substantial beneficial interest or serves as a trustee or in a similar fiduciary capacity. In addition, § 563b.3(c)(9) is amended to exclude from its coverage shares that may be attributable to individual officers and directors, acquired by an employee stock benefit plan.

Finally, the Board notes that questions have arisen in a related area, regarding the treatment of stock option plans under § 563b.3(c)(9). It is the Board's view that this section was not intended to apply to purchases by officers and directors from a converted institution pursuant to a stock option plan.

f. Issuer Repurchase Restrictions

Section 563b.3(g) of the Conversion Regulations generally prohibits an insured institution, for a period of three years from its conversion, from repurchasing any of its capital stock from any person, except in the case of a repurchase on a pro-rata basis from all stockholders. While the rule, by its terms, applies only to the recently converted institution itself, the Board is aware that the rule may have been unclear as to whether purchases by an employee stock benefit plan of the stock of its recently converted sponsor institution may be attributed to the institution and thereby be considered a repurchase subject to the rule. The Board believes that routine purchases by either tax-qualified or non-tax-qualified employee stock benefit plans of amounts of capital stock reasonable and appropriate to fund the plan should not lead to a presumption that impermissible repurchases are being made. Therefore, the Board is amending § 563b.3(g)(1) to provide that stock purchased in such a manner would not be considered a "repurchase" by the institution within the scope of the restriction and, thus, the acquisition would not be subject to the issuer repurchase restrictions of § 563b.3(g). The Board also notes in this regard that purchases of newly issued shares from the institution would not be a "repurchase" and thus would not come within the scope of the rule.

g. Acquisitions of Stock of Recently Converted Institutions

Section 563b.3(i) of the Conversion Regulations generally prohibits any person or persons acting in concert, for a period of three years following the date of completion of the conversion of an insured institution, from offering to acquire or acquiring beneficial ownership of greater than 10 percent of any class of equity securities of that institution without the prior written approval of the Board. The term "person" is broadly defined in the rule to include all forms of entities, and thus includes trusts and employee stock benefit plans.

The Board is concerned that the requirements of § 563b.3(i)(3) may make unnecessarily more difficult routine purchases by an employee stock benefit plan of capital stock of a converted institution to fund the plan, since the plan may need to receive the prior written approval of the Board to offer to acquire or acquire greater than 10 percent of the stock or to rebut the presumption of concerted action before it makes such an offer or acquisition. As discussed above, the Board believes that employee stock benefit plans provide an incentive to an institution's management and employees to perform their duties effectively and, thus, potentially benefit the FSLIC. Therefore, the Board is adding to § 563b.3(i) a new subsection (5)(v) to exempt any one or more tax-qualified employee stock benefit plans (as defined in § 563b.2(a)(37)), provided the plans have beneficial ownership in the aggregate of a total of not more than 25 percent of any class of equity securities of the recently converted institution. Commentators have supported this amendment and indicated that it will help them in attracting and motivating managerial talent.

A key issue for this purpose is the time when a plan will be deemed to beneficially own the institution's stock. Section 563b.3(i) does not define "beneficial ownership", but rather generally incorporates the definition of "beneficial ownership" in Rule 13d-3 under the Securities Exchange Act of 1934 ("Exchange Act"), 17 CFR 240.13d-3. Thus, beneficial ownership includes voting power, which involves the power to vote shares, *or* the power to dispose or to direct the disposition of shares, *or* the right to dividends and/or proceeds in liquidation, *or* the right to acquire beneficial ownership within sixty days, such as by exercise of an option, warrant or conversion right, and reaches schemes designed to avoid the definition of beneficial ownership.

Thus, vesting, as well as pass-through voting provisions, affect the total number of shares attributable to the employee stock benefit plan only when other factors also are present. In this regard, shares vested with plan participants which carry pass-through voting rights and over which the employee stock benefit plan does not otherwise retain *any* of the above-mentioned indicia of beneficial ownership will not be included for purposes of the exemption to the rule's 10 percent threshold. However, if the employee stock benefit plan does retain some form of control or legal ownership, as described above, such as dispositive power, all those shares will be considered beneficially owned by the employee stock benefit plan. (It should also be noted that such shares could *also* be deemed to be beneficially owned by the employees that also possess indicia of beneficial ownership, *e.g.*, voting rights.)

The Board also notes that the term "person" encompasses those parties or entities who may be considered for purposes of the rule to be a "group acting in concert." The term "acting in concert," which is defined in § 563b.3(i)(8)(v), is comprehensive and is intended to encompass, among other things, conscious parallel action towards a common goal—in this case, offering to acquire or acquiring the stock of an insured institution. As a mixed question of law and fact, action in concert may be established directly through available factual information or by means of a presumption that is based on the legal or familial relationships between the parties, or both. In certain circumstances, acting in concert may be presumed from business relationships where a fiduciary relationship and dual ownership of an insured institution's stock exist. For example, where a person or other entity acts as a trustee over a trust, and both the trustee and the trust have certain interests in or relationships with an insured institution, the inference is raised that they are acting in concert with respect to the shares which each owns in the insured institution. In particular, the fiduciary duties that a trustee owes to the trust lead to the presumption that they act in concert, since it is unlikely that the trustee could fulfill those duties while voting independently of the trust. The

Board had codified the rebuttable presumption of action in concert between a trust and trustee in the context of the acquisition of control of an insured institution under the Holding Company Act and Change in Savings and Loan Control Act ("Control Act"), 12 U.S.C. 1730(q), in its Acquisitions of Control Regulations. In some circumstances, however, it may be possible to rebut the presumption of concerted action by demonstrating on a clear and convincing basis that the decisions by the trustee with respect to stock held in its own account, or similarly, stock held as trustee for another trust or other fiduciary accounts, are made independently of decisions as trustee for a specific trust.

Under the previous rules, the shares of an institution held by the trustee of an employee stock benefit plan would have been presumed by the Board to be aggregated with the shares of the institution held by the plan itself in determining whether the 10 percent threshold of § 563b.3(i) has been exceeded by either the institution or the ESOP trustee. In other words, stock held by an employee stock benefit plan trustee for its own account or as a trustee or in some other fiduciary capacity with respect to trust or fiduciary accounts other than the employee stock benefit plan presumptively would have been aggregated with the stock held by the plan in assessing whether the rule's threshold has been met or exceeded, subject to rebuttal.

The amendment to § 563b.3(i) adopted by the Board exempts a tax-qualified employee stock benefit plan from the rule's approval requirements up to a 25 percent level. Thus, the amendment relaxes the limitation but does not moot the issue of whether the employee stock benefit plan and trustee's stock should be aggregated for purposes of determining whether the rule's threshold has been exceeded.

To further address the issues presented in this area, the Board is revising the term "acting in concert" by deleting § 563b.3(i)(8)(v), defining the term in § 563b.2(a)(1) to incorporate the definition of § 574.2(c), and modifying § 574.2(c)(3) to provide that, *solely* for the purpose of determining whether stock held by the trustee and stock held by the plan will be aggregated, a *tax*-qualified employee stock benefit plan will *not* be deemed to act in concert with its trustee or a person who serves in a similar fiduciary capacity. It should be emphasized, however, that this does *not* mean that two different plans having the same trustee or other fiduciaries in common, or otherwise connected, could not be found to be acting in concert and their holdings aggregated for purposes of § 563b.3(i)(3) or the Acquisitions of Control Regulations. Finally, the Board notes that for purposes of § 574.2(c), and accordingly as would apply also in the conversion context under the rules adopted today, members of the board of directors of an institution are not deemed to act in concert solely as a result of their director status.

2. Application of the Holding Company Act and the Acquisitions of Control Regulations

a. To Purchases by Employee Stock Benefit Plans. Acquisitions of control of stock from insured institutions generally are governed by either the Control Act or the Holding Company Act. The Holding Company Act prohibits any "company" directly or indirectly or acting in concert with one or more persons from acquiring "control" of an insured institution (or holding company) without the prior written approval of the Board. The term "company" here is broadly defined to include any corporation, partnership, trust, joint stock company, or similar organization. Thus, an employee stock benefit plan, as a type of trust, is subject to the Holding Company Act if it acquires an amount of stock (or takes other actions) that would constitute control under the Holding Company Act or the Board's Acquisitions of Control Regulations thereunder.

Under the Board's Acquisitions of Control Regulations, a plan's purchases of stock would be subject to the requirement of obtaining prior approval under the Holding Company Act in various situations. For example, control is conclusively determined to exist upon the acquisition of ownership, control, or the power to vote more than 25 percent of a class of voting stock of an insured institution (or holding company), or where a company controls in any manner the election of directors of an insured institution. Control also is determined to exist, subject to rebuttal, where a company acquires more than 10 percent of a class of voting stock of an institution, when such stock ownership is combined with specified "control factors."

In determining the amount of shares subject to the numerical "control" criteria, the Board notes certain issues regarding aggregation of stock that may arise. For example, as discussed in part II.C.1.g. above, shares of the institution held by trustees of the plan presumptively would be aggregated with those of the plan, subject to rebuttal, to determine whether the control threshold has been met. Accordingly, in order for regulations governing similar concepts to be consistent, the Board is amending the rebuttable presumption of concerted action set forth in § 574.4(d)(6) of the Acquisitions of Control Regulations to provide that solely for the purposes of determining whether to combine the holdings of a plan and its trustee (or fiduciary), a tax-qualified employee stock benefit plan will *not* be deemed to act in concert with its trustee or a person who serves in a similar fiduciary capacity. As already noted in the context of the comparable treatment under the Conversion Regulations, this does *not* mean that two plans having the same trustee or other fiduciaries in common would not be presumed to act in concert, since persons (in this case, the two plans) are presumed to act in concert where they both act in concert with the same third person, in this case, the common trustee under § 574.4(d)(7). Were this to occur, the Board would consider rebuttals of the presumption of action in concert on a case by-case basis.

A related issue is whether, in employee stock benefit plans with pass-through voting provisions, shares allocated to employees with pass-through voting rights or other "sterilization" provisions, *i.e.*, plans which provide that unallocated shares are voted on pass-through basis in proportion to allocated share voting, should be included. Under the Holding Company Act, as in the Conversion Regulations, the definition of control is broad and includes all means of beneficial or equitable ownership. Accordingly, the Board believes that all shares held by an employee stock benefit plan, regardless of any pass-through voting provisions (except for shares actually distributed to employees under the distribution terms of the plan), should be counted as being held by the plan for purposes for determining whether the Holding Company Act is applicable.

Consistent with its amendment to the Conversion Regulations, the Board also is revising § 574.3(c) of the Acquisitions of Control Regulations by adding a new paragraph (c)(1)(vi) to exempt from the Board's review process under the Holding Company Act acquisitions of up to 25 percent of a class of an institution's stock by a tax-qualified employee benefit p1an. This amendment is consistent with the Board's revision to § 563b.3(i) to exempt from its prior approval requirements offers to acquire and acquisitions of not more than 25 percent of a class of a newly converted institution's equity securities by a tax-

qualified employee stock benefit plan. The amendment will not affect either the requirement for approval of a holding company application where an employee stock benefit plan (or plans deemed to be acting in concert) intends to acquire more than 25 percent of a class of an institution's voting stock, or the treatment of non-tax-qualified plans.

The Board is making a corresponding revision to § 552.4(b)(8), regarding permissible charter amendments, to add with respect to beneficial ownership limitations an exclusion for tax-qualified employee benefit plans.

b. Delegation of Authority. The Board also is taking this opportunity to amend its delegation of authority for approval of acquisitions of insured institutions to reflect a recent regulatory development, and to coordinate filings that may be made in conjunction with a conversion. Previously, the Principal Supervisory Agent ("PSA") has been authorized to approve or deny any holding company application to acquire control of an insured institution, a notice of change of control or a merger application unless, *inter alia*, certain filings under the Exchange Act were required to be made within the Board. 12 CFR 546.2(i)(1)(i); 563.22(f)(1)(i), 574.8(a)(1)(i). In adopting this standard, the Board stated that "review of such acquisitions can be done more efficiently in the same office where the Exchange Act filings of such institutions are reviewed." 50 FR 48711 (Nov. 26, 1985).

After adopting these delegation standards, the Board adopted securities offering disclosure regulations applicable to all insured institutions. *See* 12 CFR 563g. The procedures of new Part 563g require review and clearance of offering circulars in connection with specified types of public offerings of securities by the Board's Office of General Counsel in a fashion similar to materials filed under the Exchange Act. Accordingly, in order to clarify any uncertainty that exists in this area, the Board is amending its delegation of authority standards in §§ 546.2(i)(1)(vi), 563.22(f)(i)(vi) and 574.8(a)(i)(v) to remove authority from the PSA to approve merger or holding company applications or to clear notices of change in control, if in connection with such transactions an offering circular is required to be reviewed and cleared pursuant to Part 563g of the Board's regulations. Similarly, the Board is also clarifying the scope of the existing delegations to delete delegated authority on the part of the PSA where merger or holding company applications or change in control notices are filed in connection with mutual to stock conversions.

E. Merger Conversions With Insolvent Insured Institutions

The Board is amending § 563b.10(c) of the Conversion Regulations in order to encourage voluntary supervisory merger conversions with any mutual institution that is qualified to undertake a supervisory conversion. The Board believes that these changes should assist the FSLIC in resolving a number of its significant supervisory cases. Specifically, the amendment grants to the resulting stock institution in a supervisory merger conversion up to three-years' post-conversion protection with regard to offers to acquire or acquisitions of more than 10 percent of any class of the institution's stock, depending upon the converting institution's asset size. The applicable time periods originally proposed were one year of coverage in the case of an insolvent mutual institution with less than $100 million in total assets; two years for an institution with assets in the $100 million to $500 million range; and three years for an institution with more than $500 million in total assets.

One commentator objected to granting takeover protection to existing stock institutions that acquired troubled institutions. The commentator argued that while the granting of takeover protection to the acquirer of a FSLIC case would be beneficial to FSLIC and to society as a whole because of the disappearance of a troubled institution, it could be detrimental to the stockholders of the acquiring institution because they would generally be prevented from tendering their shares in a hostile takeover situation during the antitakeover period. The commentator also argued that either takeover or the threat of takeover had a beneficial effect in that it was an important factor in assuring that management act in the best interest of stockholders.

The Board has carefully considered the comments received in this regard, but has concluded that the potential benefits available as a result of the amendment outweigh the theoretical arguments against it. Moreover, the Board notes that the effect of various types of antitakeover protections on stock prices will vary widely with the entity in question. For example, many recently converted state-chartered institutions with more takeover defenses than federal associations trade at higher multiples than similar federal associations. However, the Board recognizes the concern expressed by the commentator and wishes to note that in conjunction with the antitakeover protection that could be obtained in a supervisory merger conversion, the Board will especially scrutinize whether the proposed acquisition is part of a "scorched-earth" policy in which a takeover target embarks on a program of decreasing the value of a firm to the potential acquirer. Where a supervisory merger conversion, taken as a whole, is not in the best interests the converting institution, its depositors, and the FSLIC, for example, it may be denied. 12 CFR 563b.27(b)(3).

In addition, order to prevent a firm from buying takeover protection by the acquisition of a very small institution, where the takeover protection period would not have a sufficient nexus with the period needed to assimilate the acquisition of the insolvent institution, the Board has determined to revise the period of takeover protection according to the following schedule:

Asset size of institution acquired	Antitakeover period
Up to $100 million	0.
$100 up to $250 million	6 months.
$250 up to $500 million	12 months.
$500 up to $750 million	18 months.
$750 million up to $1 billion	24 months.
$1 up to $2 billion	30 months.
$2 billion or above	36 months.

This new schedule removes the potential for acquiring a disproportionate amount of takeover protection through the acquisition of a single very small institution. The categories are designed to reflect the time needed to assimilate insolvent institutions of differing sizes and to provide appropriate periods of adjustment for acquisitions of different magnitudes. Total assets would be calculated as of the end of the most recently concluded quarter of the converting institution prior to filing of the voluntary supervisory merger conversion application.

The Board also wishes to note that the availability of this treatment need not be limited to existing operating stock institutions, and that a company could acquire an institution in a supervisory merger conversion by chartering an interim stock institution subsidiary with which the converting institution would merge. As a result, the antitakeover provisions of § 563b.3(i) will apply to the stock of the parent acquiring company as well as that of the resulting institution, since the rule is applicable to indirect as well as direct acquisitions of stock of converted institution and an acquisition of the parent company's stock would constitute an indirect acquisition of the stock of its subsidiary.

The acquiring stock institution may not cumulate the postconversion protection derived from the acquisition

of a financially ailing or insolvent institution, however. In other words, the § 563b.3(i)(3) post-conversion acquisition features will last for up to three years from the most recent acquisition of an institution in a supervisory merger conversion.

F. Purchase Limitations for Officers, Director, and Their Associates in Merger Conversions

The Board also is amending § 563b.3(c)(8) of the Conversion Regulations to provide an exception to the aggregate conversion stock purchase limitations for officers, directors, and their associates in merger conversions undertaken pursuant to § 563b.10(c). Specifically, the amendment excludes the pre-merger percentage of stock ownership of the officers and directors of an existing stock institution that undertakes a merger conversion with a mutual institution in calculating the aggregate amount which may be purchased by officers and directors in connection with the merger conversion.

Previously, under § 563b.3(c)(8), the aggregate amount of stock that officers, directors, and their associates could purchase in a conversion was limited to a sliding scale of between 25 and 35 percent based upon the total asset size of the converting institution. In a standard merger conversion, the accountholders and voting members of the converting institution receive preemptive rights to subscribe for stock of the existing stock institution. Thus, the purchase limitations which applied to officers and directors of the existing stock institution and their associates who purchase its stock, could have had the effect of preventing those persons—if their aggregate stock ownership at the time of conversion equalled or exceeded the specified percentage purchase limitations—from purchasing any additional stock in the merger conversion, even where such purchases were designed merely to preserve their previous percentage ownership.

It is the Board's belief that some existing insured stock institutions may not have pursued merger conversions for this reason. Commentators have noted that management views the opportunity to purchase conversion stock as an incentive in undertaking a conversion. Therefore, the Board believes that by permitting additional purchases, the amendment to § 563b.3(c)(8) will encourage use of the merger-conversion procedure as a capital raising tool for insured institutions.

G. Definition of "Acting In Concert"

Sections 563b.3(c)(6), 563b.3(c)(7), and 563b.3(d)(5) establish percentage limitations on the amount of stock a person together with any associate or group of persons acting in concert may purchase in the conversion and various stages of the conversion. Since the recent adoption of its Acquisitions of Control Regulations, the Board and its staff have received inquiries regarding the relationship of the rebuttable presumptions of concerted action set forth in § 574.4(d) to the conversion stock purchase limitations.

The Board is revising § 563b.2 of the Conversion Regulations by adding a new paragraph (a)(1), which incorporates the definition of "acting in concert" established in § 574.2(c) of the Acquisitions of Control Regulations and applies it to the entire Part 563b, and deleting the definition of "acting in concert" in § 563b.3(i)(8)(v) which would become superfluous. The Board believes that the converting insured institution and its counsel should take appropriate steps to ensure that conversion stock purchase limitations and the requirements of the Acquisitions of Control Regulations are not exceeded by groups of persons acting in concert in connection with conversion stock purchases.

H. Use of Media Advertisements, Sales Literature and Other Forms of Publicity In Connection With the Offer and Sale of Conversion Stock

The Board also wishes to clarify certain questions which have arisen with respect to the use of media advertisements, sales literature, and other forms of publicity by converting institutions to promote a conversion stock offering to prospective investors. In this respect, the Board seeks to provide guidance to converting institutions for charting compliance with the Board's Conversion Regulations and also to alleviate any confusion which may have existed previously.

The Board notes that concerns regarding compliance with the Board's Conversion Regulations have arisen in connection with the use of media advertisements, sales literature and other forms of publicity during the mutual-to-stock conversion process in two respects: first, publicity which may constitute premature proxy soliciting material in connection with the vote of the mutual members of the thrift on the conversion to stock form; and second, information which may prematurely "offer" the conversion stock by means of prohibited communications. For example, media advertisements, sales literature or other forms of publicity used by a converting institution *prior* to the Board's approval of its proxy soliciting materials may constitute proxy soliciting materials required to be filed with the Board and cleared prior to its use, pursuant to § 563b.5(b) of the Board's Conversion Regulations.[1] In addition, § 563b.5(e) specifically requires that any additional proxy soliciting material furnished to association accountholders *subsequent* to furnishing the proxy statement regarding the proposed conversion (including soliciting material in the form of media presentations such as press releases, and radio or television scripts) must be filed with the Board for review at least five business days prior to the date on which the FHLBB is requested to authorize the use of such material.[2] As with proxy material required to be filed with and cleared by the Board prior to use pursuant to § 563b.5(b), failure to file such additional solicitation materials with the Board prior to use would constitute a violation of the Board's Conversion Regulations.

Second, media advertisements, sales literature and other forms of publicity, depending upon their content, also may constitute conversion stock offering materials which are required to be filed with and cleared by the Board prior to use. Any material which "offers" conversion stock must be accompanied or preceded by a conversion offering circular declared effective by the Board. In this regard, the broad definition of "offer" in the Board's Conversion Regulations [3] generally has been interpreted to cover a wide variety of forms of media or written communication disseminated by a converting institution at any time during the mutual-to-stock conversion process. However, the Board's staff has taken the position that a notice, containing basic information concerning a proposed offering which meets the requirements of Rule 134 under the Securities Act of 1933 ("Securities Act") [4] will not be

[1] 12 CFR 563b.5(b). Section 563b.2(a)(30) of the Board's Conversion Regulations broadly defines the terms "solicitation" and "solicit" to refer to "(i) any request for a proxy whether or not accompanied by or included in a form of proxy; (ii) any request to execute, not execute, or revoke a proxy; or (iii) the furnishing of a form of proxy or *other communication to association members under circumstances reasonably calculated to result in the procurement, withholding or revocation of a proxy.*" (emphasis added). 12 CFR 563b.2(a)(30).

[2] *See* 12 CFR 563b.5(e).

[3] Section 563b.2(a)(22) of the Board's Conversion Regulations, in pertinent part, defines the terms "offer" "offer to sell" or "offer for sale" to include "every attempt or offer to dispose of, or solicitation of an offer to buy, a security or interest in a security, for value." 12 CFR 563b.2(a)(22).

[4] *See* 17 CFR 230.134.

considered offering material for this purpose and thus, may be used prior to clearance of an offering circular.

In order to provide comprehensive guidance in this area, the Board is revising its regulation governing the offer and sale of securities, § 563b.7, and adding a new § 563b.7(a)(2), which prohibits any offer or sale of securities in a mutual-to-stock conversion under Part 563b, unless: (1) the offer or sale is accompanied or preceded by an offering circular filed with and declared effective by the FHLBB, *or* (2) an exemption from the offering circular requirement is available. The rule provides exemptions for three types of communications, which will not be deemed to be an "offer" for this purpose. These exemptions, which closely track the requirements under the Board's securities offering regulation at Section 563g,[5] and also are similar to the disclosure rules under the federal securities laws, are available for: (1) any notice of the proposed offering, used prior to the filing of an offering circular, which meets the requirements of Rule 135 under the Securities Act; (2) oral offers after the filing of an offering circular; and (3) any notice, circular, advertisement, letter or other communication, including media communications such as radio or television advertisements, which meets the requirements of Rule 134 under the Securities Act,[6] which is used after the filing of an offering circular.

The Board cautions that if a thrift publishes any information or statements in advance of a proposed offering that have the effect of arousing public interest in the issuer or its securities, this activity may be regarded as an impermissible "offer." The same concerns apply to publication, between the filing date and the effective date of an offering, of information that is part of a selling effort.

This does not mean that an institution must stop providing information to the public when it is in the process of converting. While a converting institution should not initiate publicity, it is still appropriate to respond to legitimate inquiries for factual information about the institution's financial condition and operations. Other practices that continue to be appropriate are: (1) customary and routine advertisements of products and services in the ordinary course of business; (2) distribution of customary quarterly, annual or other periodic reports to members; (3) press announcements on factual business and financial developments; and (4) responses to unsolicited inquiries from members, financial analysts, the press and others for factual information.

To be particularly avoided are the issuance of forecasts, projections or predictions concerning revenues, income or earnings per share, or the publication of opinions on values. In the event an institution publicly releases material information concerning new corporate developments while a conversion offering circular is pending, the preliminary offering circular should be amended at or before the time the information is released. If this is not done and such information is publicly released, whether inadvertently or otherwise, the pending offering circular should be promptly amended to reflect such information.

In addition, notwithstanding the general prohibition on offers and sales prior to the effective date of an offering circular, a preliminary offering circular will be permitted to be used for an offer, but not for a sale, of a security prior to the effective date of the offering circular if the preliminary version has been filed with the Board and includes the information required to be contained in the final offering circular, except for the omission of pricing information and matters dependent thereon, and if the offering circular that ultimately is declared effective by the Board is furnished to a purchaser prior to, or simultaneously with, the sale of the security. This provision also tracks the Board's securities offerings regulation.[7] In order to provide interpretive guidance in this area so that proxy soliciting materials will not be subjected to the offering circular requirements in inappropriate cases, the Board generally will consider information regarding the proposed conversion stock offering which does not exceed the disclosure requirements of either Rule 134 under the Securities Act or § 563b.4(a)(3)(ii) of the Board's Conversion Regulations [8] not to be subject to the offering circular requirements. The comments received supported these clarifying amendments.

Finally, the Board notes that interpretive questions also have arisen regarding the specific scope of permissible media communications, especially regarding radio or television advertisements, including whether such media advertisements regarding a proposed conversion stock offering may differ significantly from the standards set forth in Rule 134. In this regard, the Board notes that television and radio advertisements may serve as a legitimate means of announcing a proposed conversion stock offering, and as such, are not prohibited under the Board's conversion regulations. The Board cautions, however, that such media advertisements should, as noted above, comply with the information requirements of Rule 134 so as not be considered impermissible "offers" under the Board's Conversion regulations.

The Board notes that thrifts have increasingly considered the use of television advertisements to announce a conversion stock offering. These ads present special interpretive questions under the Board's regulations since a *visual* as well as *audio* presentation is made. While the Board is not proposing at this time any specific rules in this area, converting institutions generally should insure that such advertisements do not contain a visual presentation which would present or otherwise suggest or depict matters which would fall outside the specific scope of Rule 134 or otherwise be inconsistent with the policies underlying that Rule.

In conclusion, media advertisements in the form of radio and television ads may raise novel issues of compliance under the Board's regulations, and the Board will continue to closely scrutinize and monitor this area. In order to resolve potential compliance issues, converting institutions and their outside counsel are strongly encouraged to seek the guidance of the Board's staff by filing such materials for review prior to use.

I. Liquidation Account

The Board is aware that questions have arisen regarding the assumability or transferability of the liquidation account required to be established in non-supervisory conversions, and whether various types of transactions constitute complete liquidations for the purposes of payout of the liquidation account. Without addressing all the situations where such a distribution may or may not be required, the Board is modifying § 563b.3(f)(3), to clarify its

[5] See 12 CFR 563g.1, 563g.3.

[6] 17 CFR 230.134.

[7] *See* 12 CFR 563g.2(c)(1)–(3).

[8] *See* 12 CFR 563b.4(a)(3)(ii). Section 563b.4(a)(3)(ii) of the Board's Conversion Regulations generally permits an association to issue a press release immediately subsequent to adoption of a plan of conversion, announcing such action. However, the nature and extent of information which may be presented in such a press release is extremely limited. In this regard, the rule sets forth an exclusive "laundry list" of disclosure items; the press release must contain only (but need not contain all of) the information items set forth in the list, which predominantly is limited to factual information regarding the conversion proposal, rights of accountholders and required regulatory approvals. The rule also provides that the press release need not be filed with the FHLBB prior to its use, but may be submitted to the FHLBB's Office of General Counsel for review. *Id.*

view that the term "complete liquidation" is not meant to include a merger, consolidation, bulk sale of assets or similar transaction with a FSLIC-insured institution. The amendment provides that in the event of a merger, consolidation, bulk sale of assets, or similar transaction, with another FSLIC-insured institution, the liquidation account shall be assumed by the surviving insured institution. One commentator agreed with this revision regarding FSLIC-insured institution, while several disagreed.

The Board intends to reserve the ability to address on a case-by-case basis other situations that may be found to constitute a complete liquidation and/or upon application and having determined that appropriate safeguards are available, to permit transfer and assumption of a liquidation account. The Board notes that a variety of transactions might be deemed to constitute a complete liquidation for this purpose and is aware that the staff has expressed the view that a merger, consolidation, or equivalent transaction with a non-FSLIC-insured institution could be deemed to be a complete liquidation for this purpose.

Some commentators have raised the issue that a merger, consolidation, bulk, sale of assets or similar transactions with an FDIC-insured institution should be treated in the same way as with an FSLIC-insured institution. The amendments do not preclude this interpretation but rather give the Board the ability to assess the particular facts of each case. The Board finds it appropriate at this time not to extend the regulation further.

J. Underwriter Consulting Fee

The Board is aware that questions recently have arisen regarding the compensation paid to underwriters for various services they may render in connection with a conversion. The Board notes that a converting institution often must enter understandings with underwriters to sell conversion stock in a public offering before the institution knows how many shares will be sold in the subscription offering, or whether all shares will be sold by subscription and that a public offering therefore will not occur. In the event that all shares are subscribed and no public offering occurs, the underwriter would earn nothing in commissions and only be reimbursed for out-of-pocket expenses, which has been interpreted to include reasonable compensation for time spent by employees and officers of the underwriting firm prior to the stock offering. However, the institution may be obligated to pay certain underwriter consulting fees.

The regulations have not addressed the issue of an acceptable level of expenses under these circumstances. Accordingly, the Board is amending § 563b.7(e) to permit the payment of a consulting fee, found by the Board or its delegate to be reasonable under the circumstances, to an underwriter in the event that all shares are sold prior to the public offering and no public offering occurs. A commentator commended the Board for this provision but suggested that Board review of the reasonableness of fees may interfere with private fee negotiations. The commentator proposed allowing the Board or its delegate only to veto unfair or grossly excessive fees. The Board believes that this amendment will not be unduly burdensome and does not intend to second-guess every fee negotiated. However at this time, the need exists to safeguard against fees which, while unreasonably large, might not be grossly excessive. This provision also may enable thrifts to obtain more favorable fees.

III. Revisions to Subpart C

A. Introduction

In revising Subpart C, the Board has sought to streamline the processing of voluntary supervisory conversions and thereby to substantially increase the number of voluntary supervisory conversions that may be accomplished. In its review of both the completed and pending voluntary supervisory conversions, the Board and its staff repeatedly have been confronted with questions not previously clearly answered in Subpart C, such as the permissibility of employment contracts incident to a voluntary supervisory conversion, the amount of expenses an insured institution may incur in connection with a voluntary supervisory conversion, the components of a voluntary supervisory conversion application, the nature of the consideration given by the Board to the character and financial condition of the prospective conversion stock purchasers and other features of the transaction, and the eligibility of FDIC-insured savings banks for voluntary supervisory conversion under section 112 of the Garn-St Germain Act. 12 U.S.C. 1464(o) (1982). The Board is amending Subpart C to clarify its interpretations and policies regarding these and other matters, in order to facilitate compliance with voluntary supervisory conversion procedures, expedite applications processing, and encourage the use of the voluntary supervisory conversion procedure as a method of raising capital levels in the industry.

In addition, the Board is amending Subpart C to remove the requirement that the offer and sale of capital stock in a voluntary supervisory conversion must constitute a non-public offering. The Board believes that the potential risk to the institution of a failure to complete the conversion through the sale of conversion stock to the public is outweighed by the need to provide mutual insured institutions with the maximum appropriate flexibility to structure a plan of voluntary supervisory conversion in the most effective manner. Of course, any public offering will be fully subject to the securities offering disclosure requirements established by the Conversion Regulations.

The Board also is revising the tests it uses to determine whether an institution qualifies for voluntary supervision conversion by substantially simplifying the tests. The previous standards in section 563b.23 are replaced with a two-part test: first, whether an institution is insolvent on a GAAP basis, and second, whether the institution will be "viable," as redefined in the rule, after conversion. All other aspects of the previous tests, and it is hoped, some of the processing delays incident thereto have been eliminated.

The Board believes that reference to GAAP is a more appropriate standard to measure the existence of any equity value of an institution for its mutual account holders. Unlike regulatory capital, which is a measure of the financial buffer to the FSLIC, GAAP provides the best picture of whether there would be any equity value of the institution that could be attributed to the mutual account holders. In this respect, the Board believes that use of GAAP is fully consistent with the Board's longstanding concerns to ensure the equitability of the conversion process, and would not result in the taking of any property interest of an institution's mutual account holders. Thus, the Board believes that when determining the participation afforded mutual account holders in a conversion, a GAAP financial measure would be appropriate, while regulatory capital standards continue to be appropriate for determining the need for supervisory intervention and related exposure of FSLIC resources.

The Board believes that requiring insured institutions to be evaluated in accordance with GAAP also will best serve the public interest. Analyzing the financial strength of insured institutions on this basis also provides the Board with a more consistent basis for

comparing the financial statements filed by all insured institutions. Because of the predominant role of GAAP in the public disclosure and reporting of other financial institutions as well as other entities in the business community, financial information prepared in accordance with GAAP should provide the Board a more consistent, comprehensive basis to monitor the performance and soundness of the industry. This should also enhance industry stability by providing the Board with an additional yardstick to assess and address supervisory concerns. A commentator supported the use of generally accepted accounting principles, because they are a consistent and recognizable measurement in the industry.

In addition, the Board is aware that by determining insolvency on a GAAP basis, significantly more mutual insured institutions will be eligible to undergo a voluntary supervisory conversion, which can be an attractive conversion option to both management and potential acquirers. Generally, management and prospective investors may be more interested in undertaking a mutual-to-stock conversion if they can be assured of where control of the institution will reside after the conversion. The voluntary supervisory conversion procedure provides such assurance since the transaction is voluntary, and a purchaser or purchasers (who may include the institution's management) may acquire all of the conversion stock.

The Board also has reconsidered the application of the criteria used to determine whether a converted institution will be a viable entity following the voluntary supervisory conversion, and is substantially simplifying the existing viability standard as well as providing a second alternative viability standard. The second alternative viability standard will permit an institution to be found to be viable with a lesser initial capital infusion but would obligate the acquirer to increase the institution's capital levels in the future or risk the imposition of potentially severe supervisory measures. Reliance on the alternative viability standard also will be deemed to present issues of policy requiring approval by the Board itself, rather than by use of delegated authority.

The Board is additionally streamlining the conversion procedure by centralizing the processing of voluntary supervisory conversion applications in OGC, as is now the case with both standard and modified conversions. In this connection, the Board is delegating authority to approve voluntary supervisory conversion applications to OGC, except in cases where the application presents significant issues of law or policy. In the latter case, the application will be considered by the Board itself. The Board wishes to emphasize that this revised processing procedure is not intended to, and will not diminish the ability of ORPOS or the appropriate FHLB to scrutinize aspects of the transaction that could give rise to supervisory concerns and clearance by ORPOS and/or the appropriate FHLB is specifically required for various aspects of the conversion process. In addition, the authority to approve holding company applications and change in control notices that accompany supervisory conversion applications will continue to be delegated to ORPOS, with the concurrence of OGC and matters of supervisory concern also may be addressed in connection with such filings. With these changes, the Board hopes to expedite the conversion approval process by better defining the review and approval roles of its various Offices and the FHLBs, and thereby enable functions necessary for approval of conversions to be accomplished concurrently. Finally, the Board is adopting certain other technical amendments to Subpart C. Subpart C is being revised extensively and, therefore, the revised subpart is set forth in its entirety.

B. Scope of Subpart C

The Board has generally regarded the Conversion Regulations as applicable to all institutions that satisfy the definition of an "insured institution" under its rules, which, unless the context otherwise requires, includes federal savings banks insured by the Federal Deposit Insurance Corporation ("FDIC") and chartered by the Board under section 112 of the Garn-St Germain Act. 12 CFR 563b.2(a)(1) and 561.1 (1985), 12 U.S.C. 1464(o) (1982). Consistent with a similar recent amendment to the modified conversion rules under Subpart D, *see* 12 CFR 563b.34(a), 563b.36(b) (1985), the Board is revising section 563b.20 of Subpart C to clarify its applicability to mutual-to stock conversions under section 5(o)(2)(F) of the HOLA, (to the extent the section is in effect), as well as to sections 5(i) (1) and (2) and 5(p) of the HOLA (to the extent the latter is in effect), and section 402(j) of the NHA, and to revise current § 563b.23, which will be redesignated as § 563b.25, to specify the eligibility of FDIC-insured mutual savings banks for conversion thereunder.

The Board notes that while Subpart C has not expressly encompassed such conversions, several voluntary supervisory conversions of FDIC-insured federally and state-chartered mutual savings banks to federal stock form have been undertaken pursuant to joint action by the FDIC and the Board under section 5(o)(2)(F) of the HOLA. Specifically, such conversions have occurred under section 5(o)(2)(F) when the FDIC has certified that severe financial conditions exist that threaten the stability of an FDIC-insured savings bank and that conversion to federal-stock form is likely to improve the financial condition of the savings bank, and the Board has concurred in the determination of the FDIC and authorized the conversion pursuant to the Board's Conversion Regulations. The Board is setting forth the eligibility requirements for a section 5(o)(2)(F) voluntary supervisory conversion in new § 563b.25(a).

In order to ensure that a voluntary supervisory conversion undertaken pursuant to Subpart C will be subject to the same equitable standards and safeguards as a standard conversion undertaken pursuant to Subpart A, the Board is adding to § 563b.20 a requirement that, unless clearly inapplicable, all of the provisions of Subpart A shall apply to a voluntary supervisory conversion undertaken pursuant to Subpart C. The Board notes that as a result of the addition of this provision, it is unnecessary to retain current § 563b.28(c), which restates the provisions of § 563b.8(d) of Subpart A regarding the status of a converting insured institution's charter, and § 563b.31, which subjects a converted insured institution to the dividend and repurchase restrictions set forth in § 563b.3(g) (2)(ii) and (3) of Subpart A. The Board, therefore, is deleting §§ 563b.28(c) and 563b.31.

C. Definition of Voluntary Supervisory Conversions

In order to eliminate uncertainty as to the types and structures of transactions that fall within the scope of Subpart C, the Board is amending § 563b.21 to clarify that in addition to the sale of the converting insured institution's conversion stock directly to a person or persons, a voluntary supervisory conversion may be accomplished by mergering the converting institution into a stock institution that has been organized and newly chartered for the purpose of facilitating the conversion. Subpart C will continue to govern only voluntary supervisory conversions, and the Board will continue to exercise its power to authorize and order non-voluntary supervisory stock conversions on a case-by-case basis under its other

supervisory authorities. In addition, the Board is adding new § 563b.22 to set forth the regulatory purpose of this Subpart.

D. Qualification for Voluntary Supervisory Conversion

The Board is substantially revising and clarifying § 563b.23, which sets forth the four qualification criteria for voluntary supervisory conversion discussed in part I above. First, in recognition of the fact that the Board has the authority to approve voluntary supervisory conversions of both FSLIC-insured and FDIC-insured institutions, but that it may not be feasible—and in the case of section 5(o)(2)(F) conversions, not required—for the Board to apply the same voluntary supervisory conversion qualification criteria to FSLIC-insured and FDIC-insured institutions, the Board is clarifying in new paragraph 563b.24 that the qualification criteria in § 563b.23 apply only to FSLIC-insured institutions and specifying qualification criteria applicable to FDIC-insured institutions in a separate new paragraph 563b.25.

New paragraph 563b.25(a) establishes the qualification standards applicable to section 5(o)(2)(f) conversion undertaken by an FDIC-insured institution, *see* Part II.B. above, and new paragraph 563b.25(b) establishes the qualification criteria applicable to a voluntary supervisory conversion undertaken by an FDIC-insured mutual institution to federal stock form pursuant to section 5(i) of the HOLA. Accordingly, pursuant to new § 563b.25(b) the Board may, in its discretion, authorize an FDIC-insured institution to undergo a voluntary supervisory conversion to federal stock form if the following conditions have been met: (1) the institution is insolvent (as defined) on a GAAP basis; and (2) a sufficient amount of permanent capital stock is issued in connection with the voluntary supervisory conversion to allow the institution to meet its FDIC capital requirement immediately upon completion of the conversion. The Board intends that the § 563b.25(b) voluntary supervisory conversion procedure will be available to FDIC-insured institutions as an alternative to section 5(o)(2)(F) conversion.

Second, the Board is revising and substantially simplifying new § 563b.24, which sets forth the test used by the Board to determine whether a FSLIC-insured institution qualifies to undertake a supervisory conversion. As discussed above, the Board believes it is preferable to simplify this test, and to use GAAP to determine whether an institution is insolvent and, thus, qualifies for voluntary supervisory conversion. Specifically, in order to demonstrate that it meets this qualification test, the institution must submit a audited balance sheet prepared in accordance with GAAP which reflects a debit balance in retained earnings. The Board believes that the use of GAAP represents a better measure of whether there is any value that could be attributed to account holders in the institution, and thus would be fully consistent with the Board's historical concerns regarding the interests of mutual account holders.

Thus, the test for determining whether an institution qualifies to undertake a voluntary supervisory conversion will simply be, first, whether the institution would have no net equity realizable upon liquidation on a GAAP basis, and second, whether the institution after conversion would satisfy the new viability test set forth in revised § 563b.26. The Board also is amending the voluntary supervisory conversion qualification criteria to clarify that if the converting institution is state chartered and is converting to state stock form, the conversion must be authorized under state law. Finally, the Board wishes to emphasize that it will closely scrutinize any transactions undertaken by an institution which have the effect of creating or recognizing losses which thereby enabling an institution to qualify for a supervisory conversion. Where such transactions are undertaken proximately in time to the conversion application, cannot be justified by an independent business purpose, and/or were authorized by persons who will be acquiring stock in the conversion, the Board may elect to disregard the effect of the transaction in determining whether an institution qualifies for a supervisory conversion.

In sum, as a result of the current proposal, § 563b.22 is redesignated as § 563b.23 and revised to incorporate appropriate new section references; § 563b.24 is revised to incorporate the foregoing simplified qualification test for FSLIC insured institutions; § 563b.23 is replaced with new § 563b.25 containing provisions applicable to FDIC-insured institutions; and existing §§ 563b.25, 563b.32 and 563b.33, which deal with the determination of realizable equity value of an institution, treatment of appraised equity capital and capital certificates, are deleted.

E. Viability of Converted FSLIC-Insured Institution

Section 563b.26 has set forth the required characteristics of a viable entity. Previously, these characteristics have been that the capital of the insured institution after conversion would (1) meet regulatory requirements, and (2) be reasonably sufficient to absorb projected operating losses for a period of not less than three years after completion of the conversion.

The Board has reconsidered the previous definition of viable entity and is of the view that a more flexible approach to the required initial capital infusion would have the desirable effect of encouraging management and prospective acquirers to undertake voluntary supervisory conversions. Accordingly, the Board in revised § 563.26 is creating two alternative viability tests. When the conversion meets the standards of the first test, including the infusion of a substantial new capital base for the converted institution, an expedited processing procedure will be available. Accordingly, the Board is revising the definition of viable entity by providing a simplified alternative standard as follows: an FSLIC-insured institution may be deemed a viable entity if the Board determines that the prospective acquirer will infuse sufficient new capital to cause the institution to achieve a ratio of capital to total liabilities, of the greater of either 3% of liabilities, computed in accordance with GAAP, or the institution's regulatory capital requirement as of the time of conversion. The Board in the August release proposed new capital infused to raise the net worth to 4.5%. Some commentators felt that this amount was excessive. Upon reconsideration, and in view of the implementation of the Board's new regulatory capital requirements which increase required regulatory capital levels, the Board is revising this to an amount equal to at least to the greater of 3% of liabilities computed on a GAAP basis or the minimum regulatory capital requirement. Applicants will be required to submit *pro forma* financial statements which demonstrate that as a result of the conversion, the institution will meet this test.

The second part of the previous test, regarding viability over a three-year horizon, is eliminated. Supervisory conversions that meet the *first* alternative viability test will be eligible for approval under delegated authority by OGC, provided that the transaction does not present issues of policy requiring consideration by the Board, and provided also that ORPOS and the appropriate FHLB have no objection to specified aspects of the transaction.

The amendments also create a second alternative viability test. Under this alternative, an FSLIC-insured institution will be deemed a viable entity if the

prospective acquirer will infuse an amount of capital sufficient to increase the converting insured institution's capital to at least one percent of liabilities calculated on a GAAP basis, immediately following conversion. As in the case of the first alternative, applicants will be required to submit *pro forma* financial statements which demonstrate that as a result of the conversion, the institution will meet this test. In addition, in such cases, the acquirer must agree in writing with the FSLIC to infuse additional capital into the converted institution, as necessary, to enable the institution to increase its capital on a scheduled basis such that the institution's capital will comply with the Board's regulatory capital regulations, within not more than five years of the date of conversion. The one commentator specifically addressing the alternative felt that it was appropriate.

The Board does not intend to foreclose the use of non-cash assets or securities which do not constitute permanent equity capital, such as subordinated debt or mandatorily redeemable previability standard. The use of securities not constituting permanent equity capital in a voluntary supervisory conversion must be justified by prospective acquirer, however, and the Board intends to evaluate the acceptability of their use on a case-by-case basis.

The written agreement entered into between the FSLIC and prospective acquirer under the second alternative viability standard could provide for a range of sanctions for failure to achieve the required increased levels of capital, or to adhere to the business plan required to be submitted as part of the supervisory conversion application. The Board, in approving an application under this alternative viability tests, will have the ability to determine which potential sanctions are appropriate to apply in a given case. In addition, the Board and the Supervisory Agent will exercise their discretion as to whether to pursue any sanction for failure to meet the terms of the agreement. Thus, for example, the Board could seek the automatic effectiveness of a consent agreement with the FSLIC, the vesting of proxies to vote the acquirer's shares in the institution with the Principal Supervisory Agent of the appropriate FHLB, the ability of the PSA to terminate certain or all executive officers' employment with the institution, and/or the imposition of appropriate capital maintenance obligations. Transactions relying on this second alternative viability test will be deemed to present policy issues appropriate for consideration by the Board itself and will not be eligible for approval under delegated authority. One commentator suggested that the acquirer be provided the opportunity to be heard prior to the imposition of a sanction. The Board envisions that an acquirer will have an opportunity to respond to alleged failure to meet scheduled contributions prior to the imposition of sanctions, as in the case in other enforcement matters.

Under either of the foregoing alternatives, the viability test will contain a requirement that the transaction overall must be in the best interests of, and not present the potential for injury to, the converting institution, its depositors, or the FSLIC. The Board includes this additional criterion as a result of its experience in several cases where the managerial resources, integrity, or financial resources of the prospective acquirer in the conversion transaction presented significant concerns to the Board relating to the safety and soundness of the insured institution after conversion, the welfare of depositors and risk to the FSLIC. The qualification criteria have not previously included an express standard which empowered the Board to disapprove a voluntary supervisory conversion on the basis of the managerial resources, integrity, or financial condition of the prospective conversion stock purchaser or other unfavorable features of the transaction. With respect to the managerial resources of the prospective acquirer, however, the Board or ORPOS, with the concurrence of OGC, will continue to have the option to consider a change in control notice or holding company application filed as part of the conversion application under the respective standards 12 CFR 574.7(c), 574.7(d) (1986).

The Board also is eliminating the alternative previously contained in § 563b.26 for the proposed conversion stock purchaser to guarantee to maintain the insured institution's capital at regulatorily required levels for a period of not less than three years from the date of completion of the conversion, in lieu of providing an opinion of qualified, independent counsel or an independent certified public accountant regarding the tax consequences to the insured institution arising from the conversion, or an Internal Revenue Service ruling that the transaction qualifies as a tax-free reorganization. The Board believes that the viability of the institution is adequately addressed by the revised viability tests of the supervisory conversion qualification criteria, and that it is important for a converting insured institution, as well as the Corporation, to receive professional advice regarding the tax consequences arising from a voluntary supervisory conversion. Moreover, the Board will continue to have the option to impose, on a case-by-case basis, individual capital maintenance requirements as a condition of approval of voluntary supervisory conversions, on those applications that are considered by the Board and not handled under delegated authority.

F. Voluntary Supervisory Conversion Application

The Board notes that a variety of the documents and information necessary for its staff to review a voluntary supervisory conversion and related transactions have not previously been specifically required to be filed as part of the application under former § 563b.27. The Board, therefore, is amending § 563b.27, to require that the following information and documents, if applicable to the transaction, be filed by an insured institution as part of its voluntary supervisory conversion application: (1) The plan of conversion; (2) a copy of any agreements between the converting institution and the proposed conversion stock purchasers; (3) an opinion of qualified independent counsel or an independent certified public accountant regarding the tax consequences to the insured institution arising from the conversion, or an Internal Revenue Service Ruling that the transaction qualifies as a tax-free reorganization; (4) a business plan; (5) a holding company application or change in control notice; (6) the proposed charter and bylaws of the converted institution; (7) the proposed stock certificate form; (8) a description of all existing and proposed employment contracts; (9) all filings required under Parts 563b and 563g; (10) a subordinated debt application, if applicable; (11) applications for permission to organize a stock institution, Federal Home Loan Bank membership, insurance of accounts, and merger, if applicable; (12) an opinion of an independent public accountant regarding the appropriateness of the accounting treatment for the transaction and the conformity of such accounting treatment to generally accepted accounting principles and Board Memorandum No. R–55; (13) information to support the value of any non-cash assets to be contributed to the insured institution in connection with the voluntary supervisory conversion (appraisals submitted in this connection must be

acceptable to the Board and, in the case of real estate assets, must meet the standards of Board Memorandum No. R–41c); (14) a description of the estimated expenses of the voluntary supervisory conversion of the insured institution; (15) an audited balance sheet (i) prepared in accordance with GAAP as of a date within 90 days of the date of submission of the conversion application, (ii) prepared by an auditor and in the form of an audit report both of which meet the requirements of Article 2 of Regulation S–X, 17 CFR 210.2; and (iii) which reflects a debit balance in retained earnings; (16) *pro forma* financial statements applying "push down" purchase accounting to the financial statements described in item (15) above, and which reflect stockholder equity equal to at least (i) 3 percent of the institution's total liabilities, (ii) the institution's regulatory capital requirement under § 563.13, or (iii) 1 percent of the institution's total liabilities; (17) an opinion of independent counsel that the voluntary supervisory conversion of a state-chartered insured institution to state stock form is authorized under applicable state law, if applicable; (18) a specific description of any of the features of the insured institution's application that do not conform to the requirements of Subpart C; and (19) a specific description of and detailed justification for any waivers or supervisory forebearances that are requested as part of the voluntary supervisory conversion.

G. Sales of Conversion Stock

As discussed in Part II.A above, the Board is removing the requirement previously contained in § 563b.30 that the offer and sale of voluntary supervisory conversion stock must constitute a non-public offering under Part 563g of the Subchapter. Pursuant to new § 563b.30, each insured institution that converts on a voluntary supervisory basis will be required to offer and sell its conversion stock pursuant to the requirements of 12 CFR Part 563b. In addition, pursuant to § 563b.20(c), the offer and sale of a converting insured institution's voluntary supervisory conversion stock would be subject to the provisions of Subpart A unless clearly inapplicable.

H. Procedural Requirements

Previously under § 563b.28(a), an applicant was required to file an original and two copies of the voluntary supervisory conversion application with the Principal Supervisory Agent of the applicable FHLB ("PSA") and one copy with ORPOS. In order to expedite the application processing procedure, the Board is revising § 563b.28(a), to require an applicant to file an original and one copy of the voluntary supervisory conversion application with the Board's Office of General Counsel, with one copy each to ORPOS and the appropriate PSA.

The Board has sought to streamline the processing of voluntary supervisory conversion applications by modelling the new process upon that already in effect with respect to standard conversions. The Office of General Counsel will have delegated authority to approve voluntary supervisory conversions, except in cases presenting issues of policy, with clearance required from ORPOS and the appropriate FHLB for components of the application which may present supervisory concerns. The aspects of the application requiring ORPOS/FHLB clearance under this delegated authority processing procedure are specified in § 563b.28(c). In addition, as noted previously, ORPOS, with the concurrence of OGC, must review and may possess delegated authority to approve holding company applications and change in control notices required to be submitted in connection with supervisory conversion applications. At this time, the Board believes that such applications and notices should be considered in tandem with the supervisory conversion application to which they relate, and thus should not be approved under delegated authority by the FHLB.

By amending §§ 543.2(h)(3) and 562.7, the Board also is delegating authority to charter interim federal institutions and to approve the insurance of accounts for such institutions, where an institution is created in connection with, and to facilitate, transactions that may be approved by the PSA or by ORPOS, OGC or the Director of the Office of District Banks. These steps should further expedite the processing of conversions, and is modelled upon the delegation standards previously in existence with respect to mergers generally.

I. Expenses

The Board is providing in new § 563b.31, that expenses incurred by an insured institution in connection with a voluntary supervisory conversion shall be reasonable and, with respect to an FSLIC-insured institution, shall not be in an amount such that the proceeds to the institution from the sale of its conversion stock would be insufficient to satisfy the applicable viability qualification criteria.

J. Employment Contracts

The Board is adding a new § 563b.32 to clarify its concerns regarding employment contracts incident to a voluntary supervisory conversion, particularly those to existing management of the applicant with a term in excess of one year. In addition, the Board is requiring that an applicant for a voluntary supervisory conversion justify any employment contract incidental to the conversion, and otherwise demonstrate to the Board's satisfaction that the making of such an employment contract by an insured institution would not be an unsafe or unsound practice or represent a sale of control. For example, employment contracts entered into in connection with conversions relying upon the second alternative viability standard could be subject to the provisions of any agreement entered into as a condition of use of the alternative standard. Finally, new § 563b.32 provides that the Board or its delegate shall determine the permissibility of an employment contract based upon, at a minimum, the applicant's justification for the contract, the term, salary, and severance provisions of the contract, the identity and background of the officer or employee subject to the employment contract, and the amount of conversion stock to be purchased by such officer or employee or his affiliates or associates.

IV. Revisions to Subpart D

A. Introduction

The Board also is adopting several technical amendments and other modifications to Subpart D in order to expedite the processing of modified conversion applications, and thereby to encourage the use of the modified conversion procedure by insured institutions as a capitalization vehicle.

The Board is revising the test used to determine whether an insured institution qualifies for a modified conversion by referring to a GAAP-based standard as it did for voluntary supervisory conversions. Thus, an institution with capital calculated in accordance with GAAP that fails to meet the Board's required minimum capital level could be eligible to undertake a modified conversion if the institution also demonstrates that it is unable to accomplish a standard conversion which would raise a specified level of capital. Qualification under this test must be demonstrated by submission of (i) an audited balance sheet prepared in accordance with generally accepted accounting principles which reflects an amount of retained earnings in an

amount less than the amount of the institution's required level of regulatory capital, (ii) an independent appraisal describing the amount of capital that could be raised in a conversion stock offering in a standard conversion, and (iii) *pro forma* financial statements which demonstrate that as a result of an infusion of the amount of capital that could be raised in a standard conversion, the institution would not have an amount of stockholders' equity at least equal to the institution's required level of regulatory capital under § 563.13. The Board also is incorporating into the rule an expectation that the Board had previously expressed in the preamble to its original promulgation of the modified conversion rules, to clarify that acquirers of a controlling amount of stock in a modified conversion are required to pay a control premium for the acquisition.

Because of the extent of the changes proposed to Subpart D, the revised subpart is set forth in its entirety.

B. Technical Amendments and Other Modifications

The Board is deleting the requirement formerly in § 563b.38 that a modified conversion applicant must obtain prior written permission from the Corporation to file a modified conversion application. Such a requirement is not imposed on an applicant for supervisory conversion under Subpart C or standard conversion under Subpart A, and this pre-filing approval requirement in the modified conversion context may have unduly delayed the processing of modified conversion applications. In connection with this revision, the Board also is deleting the last sentence of § 563b.35, which refers to the pre-filing approval requirement of § 563b.38. In addition, the Board is clarifying, in new § 563b.39, that an insured institution seeking to undergo a modified conversion shall file an application for approval in accordance with the requirements of § 563b.8 of Subpart A. The Board is also adding a brief description of the modified stock conversion, in new § 563b.35.

Finally, the Board is amending § 563b.34(a) to clarify the applicability of Subpart D to mutual-to-stock conversions under §§ 5(i) (1) and (2) of the HOLA and 402(j) of the NHA, as well as to §§ 5(o)(2)(F) and 5(p) of the HOLA, and revising § 563b.37(b) to clarify that both state-chartered and federally chartered FDIC-insured mutual savings banks may undergo modified conversions to federal stock form pursuant to § 5(o)(2)(F) of the HOLA.

C. Qualification for Modified Conversion

The Board is revising § 563b.36(c), which sets forth the guidelines discussed in part I, above, for determining whether an institution qualifies to undertake a modified conversion. Previously, § 563b.37(c) generally provided that an insured institution qualified for a modified conversion if it did not meet its regulatory capital requirement and allowed an institution to recognize deferred losses and disregard appraised equity capital in determining whether its regulatory capital was sufficiently low to justify a modified conversion.

The Board is revising and substantially simplifying this qualification guideline by providing that an insured institution qualifies for modified conversion if it meets a two-part test. First, the institution must not meet its applicable regulatory capital requirement computed on the basis of GAAP. As discussed in Part III.D, above, the Board is revising Subpart C in a similar manner. Second, the institution must not be able to undertake a standard conversion, which, on the basis of an independent valuation as provided in § 563b.7 acceptable to the Board or its delegate, would raise sufficient capital to enable the institution to meet its regulatory capital requirement computed in accordance with GAAP.

The Board is making this revision because it believes that using GAAP to determine whether an institution is financially qualified to undergo a modified conversion is a realistic measure of the institution's financial position from the perspective of the extent of equity value in the institution which could be obtainable by the mutual account holders. Moreover, like the voluntary supervisory conversion, the modified conversion is attractive to both management and potential acquirers, since it provides assurance of how control in the institution will be vested after the conversion. For this reason, the Board is of the view that the amendment to the qualification guideline will facilitate the modified conversion procedures. The Board wishes to note, however, that as in the case of supervisory conversions, transactions undertaken by an institution which have the effect of creating or recognizing losses which thereby enable an institution to qualify for a modified conversion will be closely scrutinized with reference to the same standards discussed in Part III.D., above.

D. Substantive Guidelines

The Board is adding new § 563b.38(g), which requires acquirers of control in an institution undertaking a modified conversion to pay the price per share set for all acquirers plus an additional control premium, in an amount, form, and on terms acceptable to the Board or its delegate. This premium recognizes the additional value attributable to a control block of stock and also provides additional capital to the institution.

The Board is also amending § 563b.38(e) to revise terminology in certain respects and to delete clause (2) and replace it with more comprehensive language comparable to that proposed for the viability test for supervisory conversions regarding the overall benefit of the transaction to the institution, its depositors and the FSLIC.

E. Buyback of Minority Stock

The Board is aware that despite the ability of insured institutions that undertake modified conversions to limit the preemptive subscription rights of accountholders and other members on a sliding scale based upon the institution's capital as a percentage of liabilities, some prospective acquirers may have been reluctant to use the modified conversion procedure because of their inability in most cases to obtain all of the common stock in the conversion. While the preemptive rights of members have been an essential element in the Conversion Regulations since their introduction, the Board has carved out exceptions to this requirement in supervisory conversions and in modified conversion involving institutions in which there is negligible or no realizable liquidation value.

The Board wishes to maintain a balance between the ownership interests of accountholders and other shareholders, and the need of institutions undertaking modified conversions to provide prospective acquirers with the assurance of obtaining control. The Board is revising current § 563b.37 in new § 563b.38(h) to provide that for three years following the completion of a modified conversion, controlling shareholders may acquire and the converted institution may repurchase other shares only after receiving Board approval and upon making an offer that reflects the fair value of the shares, supported by an independent appraisal. The appraisal would be based on several factors, including historic and projected earnings, financial strength, market price, net asset value, dividends, investment value, and book value.

F. Modified Conversion Application

The Board notes that a variety of the documents and information necessary for its staff to review a modified conversion and related transactions have not been specifically required to be filed as part of the application under § 563b.39. The Board, therefore, is amending § 563b.39 to require that the following information and documents, if applicable to the transaction, be filed by an insured institution as part of its modified conversion application: (1) The plan of conversion; (2) a copy of any agreements between the converting institution and the proposed conversion stock purchasers; (3) an opinion of qualified independent counsel or an independent certified public accountant regarding the tax consequences to the insured institution arising from the conversion, or an Internal Revenue Service Ruling that the transaction qualifies as a tax-free reorganization; (4) a business plan; (5) a holding company application or change in control notice; (6) the proposed charter and bylaws of the converted institution; (7) and the proposed stock certificate form; (8) a description of all existing and proposed employment contracts; (9) all filings required under Parts 563b and 563g; (10) a subordinated debt application, if applicable; (11) applications for permission to organize a stock institution, Federal Home Loan Bank membership, insurance of accounts, and merger, if applicable; (12) an opinion of an independent public accountant regarding the appropriateness of the accounting treatment for the transaction and the conformity of such accounting treatment to generally accepted accounting principles and Board Memorandum No. R–55; (13) information to support the value of any non-cash assets to be contributed to the insured institution in connection with the modified conversion (appraisals submitted in this connection must be acceptable to the Board and, in the case of real estate assets, must meet the standards of Board Memorandum No. R–41c); (14) a description of the estimated expenses of the modified conversion of the insured institution; (15) an audited balance sheet (i) prepared in accordance with GAAP as of a date within 90 days of the date of submission of the conversion application, (ii) prepared by an auditor and in the form of an audit report both of which meet the requirements of Article 2 of Regulation S–X, 17 CFR 210.2, and (iii) which reflects a balance in retained earnings in an amount less than the institution's regulatory capital requirement calculated under § 563.23; (16) an independent appraisal meeting the requirements of § 563b.7 which describes the amount of capital that the institution could raise in a standard conversion stock offering, and supports the control premium proposed to be paid in the modified conversion; (17) *pro forma* financial statements which demonstrates that as a result of an infusion of the amount of capital that could be raised in a standard conversion, the institution would not have an amount of stockholders' equity at least equal to the institution's required level of regulatory capital and that as a result of the capital infusion proposed in the modified conversion, that the amount of stockholders' equity would at least equal such level of required capital; (18) if applicable, an opinion of independent counsel that the modified conversion of a state-chartered insured institution to state stock form is authorized under applicable state law, if applicable; (19) a specific description of any of the features of the insured institution's application that do not conform to the requirements of Subpart D; and (20) a specific description of and detailed justification for any waivers or supervisory forebearances that are requested as part of the modified conversion. The procedural requirements governing an application for a modified conversion are set forth in new § 563b.41.

Final Rule

The Board notes that while the final rule being adopted today is substantially similar to the proposal, these final amendments differ from the proposal in certain aspects. The proposed amendment to § 563b.3(i)(6), that would have added a standard that the Board could deny an application involving an offer for or announcement of an acquisition of securities to "be beneficial to the converted institution, the depositors of the converted institution, and the FSLIC," has been revised to refer more specifically to the effect of the acquisition on prudent deployment of conversion proceeds. The proposed amendment to § 563b.10(c)(2)(ii), is being modified as to the threshold amounts of assets of an acquired insolvent institution that result in the various time periods for which the acquiring institution will be subject to § 563b.3(i)(3). The viability alternative in § 563b.27(b)(1) which was proposed at 4.5% is being set at the greater of 3% of liabilities computed on a GAAP basis, or the minimum required regulatory capital.

The effective date of this rule is the date of publication in the **Federal Register**. All applications filed after that date shall be processed in accordance with the procedures, substantive standards, and policies adopted today.

Effective Date

Pursuant to 12 CFR 508.14, the Board finds that the 30-delay of the effective date is unnecessary with respect to these amendments, which are effective November 5, 1986. The amendments relieve restrictions upon insured institutions, and the Board wishes to secure immediately the full measure of the benefits of these amendments for the thrift industry. More specifically, these amendments will encourage more insured institutions to undertake conversion from mutual to stock form, resulting in significant infusions of new capital, and in particular will enable more institutions that fail to meet their minimum regulatory capital requirements or that have a negative net worth to convert to stock form. These amendments also provide additional incentives for institutions to participate in merger conversions with insolvent institutions, clarify issues relating to the purchases of stock by management, and streamline the administrative procedure for filing and processing conversion applications.

Final Regulatory Flexibility Analysis

Pursuant to Section 3 of the Regulatory Flexibility Act, 5 U.S.C. 604, the Board is providing the following final regulatory flexibility analysis:

1. Need for and objectives of the rule. These elements are incorporated above in **SUPPLEMENTARY INFORMATION.**

2. Issues raised by comments and agency assessment and response. These elements are incorporated above in **SUPPLEMENTARY INFORMATION.**

3. Significant alternatives minimizing small-entity impact and agency response. The Small Business Administration defines a small financial institution as "a commercial bank or savings and loan association, the assets of which, for the preceding fiscal year, do not exceed $100 million." 13 CFR 121.13(a). Therefore, small entities to which the final rule applies are the 1,742 insured institutions that had assets totaling $100 million or less as of December 31, 1985.

The final amendments treat insured institutions similarly regardless of size because to do otherwise would be fundamentally inconsistent with the objectives of the rule. The Board's supervisory experience indicates that smaller and larger institutions will benefit from the applications of these amendments.

List of Subjects in 12 CFR Parts 543, 546, 562, 563, 563b, and 574

Administrative practice and procedure, Bank deposit insurance, Holding companies, Reporting and recordkeeping requirements, Savings and loan associations, Securities.

Accordingly, the Board hereby proposed to amend Parts 543 and 546, Subchapter C, Parts 562, 563, 563b and 574 of Subchapter D, Chapter V, Title 12, Code of Federal Regulations, as set forth below.

Subchapter C—Federal Savings and Loan System

PART 543—INCORPORATION, ORGANIZATION, AND CONVERSION OF FEDERAL MUTUAL ASSOCIATIONS

1. The authority citation for 12 CFR Part 543 is revised to read as follows, and all authority citations at the ends of the sections are removed.

Authority: Secs. 2, 5, 48 Stat. 128, 132, as amended (12 U.S.C. 1462, 1464); secs. 401–403, 405–407, 48 Stat. 1255–1257, 1259–1260, as amended (12 U.S.C. 1724–1726, 1728–1730); sec. 408, 82 Stat. 5, as amended (12 U.S.C. 1730a); sec. 801, 91 Stat. 1147, as amended (12 U.S.C. 2901 *et seq.*); Reorg. Plan No. 3 of 1947, 12 FR 4981, 3 CFR, 1943–1948 Comp., p. 1071.

2. Amend § 543.2 by revising paragraph (h)(3) to read as follows:

§ 543.2 Application for permission to organize.

* * * * *

(h) * * *

(3) *Delegations of authority.* (i) The Board delegates the authority to approve applications for permission to organize an interim Federal association under paragraph (g) of this section to the Principal Supervisory Agent (as defined in § 541.18 of this subchapter), provided that the Principal Supervisory Agent otherwise is authorized to approve the transaction for which the interim Federal association has been chartered to facilitate.

(ii) The Board delegates the authority to approve applications for permission to organize an interim Federal association under paragraph (g) of this section to the Director of the Office of District Banks or his designee with the concurrence of the General Counsel or his designee, provided that the Director of the Office of District Banks, the General Counsel, or the Director of the the Office of Regulatory Policy, Oversight and Supervision ("ORPOS"), jointly or individually, otherwise are authorized to approve the transaction for which the interim Federal association has been chartered to facilitate.

PART 546—MERGER, DISSOLUTION, REORGANIZATION, AND CONVERSION

3. The authority citation of Part 546 is revised to read as follows, and the authority citations at the ends of the sections are removed.

Authority: Secs. 2, 5, 48 Stat. 128, 132, as amended (12 U.S.C. 1462, 1464); secs. 401–403, 405–407, 48 Stat. 1255–1257, 1259–1260, as amended (12 U.S.C. 1724–1726, 1728–1730); Sec. 408, 82 Stat. 5, as amended (12 U.S.C. 1730a); Reorg. Plan No. 3 of 1947, 12 FR 4981, 3 CFR, 1943–1948 Comp., P. 1071.

4. Amend § 546.2 by adding new paragraphs (i)(1), (vi), and (vii) to read as follows:

§ 546.2 Procedure; effective date.

* * * * *

(i) * * *

(1) * * *

(vi) Either constituent association is required under section 563g.2 of this chapter to file an offering circular with the Board.

(vii) The merger is part of a conversion under Part 563b of this Chapter.

PART 552—INCORPORATION, ORGANIZATION, AND CONVERSION OF FEDERAL STOCK ASSOCIATIONS

5. The authority citation for Part 552 is revised to read as follows, and the authority citations at the ends of the sections are removed.

Authority: Sec. 4, 80 Stat. 824, as amended (12 U.S.C. 1425a); secs. 2, 5, 48 Stat. 128, 132, as amended (12 U.S.C. 1462, 1464); secs. 401–403, 405–407, 48 Stat. 1255–1257, 1259–1260, as amended (12 U.S.C. 1724–1726, 1728–1730); sec. 408, 82 stat. 5, as amended (12 U.S.C. 1730a); Reorg. Plan No. 3 of 1947, 12 FR 4981, 3 CFR, 1943–1948 Comp., p. 1071.

6. Section 552.2–2(d) is revised to read as follows:

§ 552.2–2 Procedures for organization of interim Federal Stock Association.

* * * * *

(d) The authority of the Board to approve applications for permission to organize an interim Federal association may be exercised as provided in §§ 543.2(h)(3) (i) and (ii) of this chapter.

7. Section 552.4(b)(8) Section 8 is amended by revising the first paragraph of A to read as follows:

§ 552.4 Charter amendments.

* * * * *

(b) * * *

(8) * * *

Section 8. * * *

A. *Beneficial Ownership Limitation.* No person shall directly or indirectly offer to acquire or acquire the beneficial ownership of more than 10 percent of any class of an equity security of the Association. This limitation shall not apply to a transaction in which the Association forms a holding company without change in the respective beneficial ownership interests of its stockholders other than pursuant to the exercise of any dissenter and appraisal rights, the purchase of shares by underwriters in connection with a public offering, or the purchase of shares by a tax-qualified employee stock benefit plan which is exempt from the approval requirements under § 574.3(c)(1)(vi).

* * * * *

Subchapter D—Federal Savings and Loan Insurance Corporation

PART 562—APPLICATION FOR INSURANCE OF ACCOUNTS

8. The authority citation for 12 CFR Part 562 is revised to read as follows, and the authority citations at the ends of §§ 562.3, 562.4, and 562.5 are removed.

Authority: Secs. 2, 5, 48 Stat. 128, 132, as amended (12 U.S.C. 1462, 1464); secs. 401–403, 405–407, 48 Stat. 1255–1257, 1259–1260, as amended (12 U.S.C. 1724–1726, 1728–1730); sec. 408, 82 Stat. 5, as amended (12 U.S.C. 1730a); sec. 801, 91 Stat. 1147, as amended (12 U.S.C. 2901 *et seq.*); Reorg. Plan No. 3 of 1947, 12 FR 4981, 3 CFR, 1943–1948 Comp., p. 1071.

9. Amend § 562.7 by redesignating it as § 562.7(a) and by adding a new paragraph (b) to read as follows:

§ 562.7 Action by Corporation.

* * * * *

(b) The Board delegates to the Principal Supervisory Agent or to the Director of the Office of District Banks or his designee, with the concurrence of the General Counsel or his designee, the authority to approve the application for insurance of accounts of an interim Federal association (i) accompanying an application for permission to organize an interim federal association which may be approved under delegated authority pursuant to §§ 543.2(h)(3) (i) and (ii) respectively, or (ii) for an interim state-chartered institution chartered to facilitate a transaction which otherwise may be approved under delegated authority by the Principal Supervisory Agent or by the Director of the Office of District Banks, the General Counsel or the Director of ORPOS, or their respective designees, jointly or individually.

PART 563—OPERATIONS

10. The authority for Part 563 continues to read as follows:

Authority: Sec. 10, 47 Stat. 725, as amended (12 U.S.C. 1421 et seq.); sec. 5A, 47 Stat. 727, as added by sec. 1, 64 Stat. 256, as amended (12 U.S.C. 1425a); sec. 4, 80 Stat. 824, sec. 17,

46 Stat. 736, as amended (12 U.S.C. 1425b and 1437); sec. 2, 48 Stat. 128, as amended (12 U.S.C. 1462); sec. 5, 48 Stat. 132, as amended (12 U.S.C. 1464); sec. 202, 96 Stat. 1489, as amended (12 U.S.C. 1729(f)); secs. 401–407, 48 Stat. 1255–1260, as amended (12 U.S.C. 1724–1730); sec. 408, 82 Stat. 5, as amended (12 U.S.C. 1730a); Reorg. Plan No. 3 of 1947, 12 FR 4981, 3 CFR, 1943–1948 Comp., p. 1071.

11. Amend § 563.22 by adding a new paragraph (f)(1)(vi) to read as follows:

§ 563.22 Merger, consolidation, purchase or sale of bulk assets, or assumption of liabilities.

* * * * *

(f) * * *

(1) * * *

(vi) The insured institution to be acquired or the acquiror is required under § 563g.2 of this Chapter to file an offering circular with the Corporation in connection with the merger.

* * * * *

PART 563b—CONVERSIONS FROM MUTUAL TO STOCK FORM

12. The authority citation for 12 CFR Part 563b is revised to read as set forth below and all other authority citations in this Part are removed:

Authority: Sec. 5A, 47 Stat. 727, as added by sec. 1, 64 Stat. 256, as amended (12 U.S.C. 1425a); sec. 17, 46 Stat. 736, as amended (12 U.S.C. 1437); secs. 2, 5, 48 Stat. 128, 132, as amended (12 U.S.C. 1462, 1464); secs. 401–403, 405–407, 48 Stat. 1255–1257, 1259–1260, as amended (12 U.S.C. 1724–1726, 1728–1730); sec. 408, 82 Stat. 5, as amended (12 U.S.C. 1730a); secs. 3(b), 12–14, 23, 48 Stat. 882, 892, 894–895, 901, as amended (15 U.S.C. 78c, 1–n, w); Reorg. Plan No. 3 of 1947, 12 FR 4981, 3 CFR, 1943–1948 Comp., p. 1071.

13. Section 563b.2 is amended as follows:

A. Paragraph (a)(36) is redesignated as paragraph (a)(38).

B. Paragraphs (a)(1) through (a)(35) are redesignated as paragraphs (a)(2) through (a)(36).

C. New paragraphs (a)(1) and (a)(37) are added to read as set forth below.

D. New paragraph (a)(5)(ii) is revised to read as set forth below. The revised and added materials read as follows:

§ 563b.2 Definitions.

(a) * * *

(1) *Acting in concert.* The term "acting in concert" shall be defined as provided in § 574.2(c).

* * * * *

(5) *Associate.* * * *

(ii) Any trust or other estate in which such person has a substantial beneficial interest or as to which such person serves as trustee or in a similar fiduciary capacity, except that for the purposes of §§ 563b.3 (c)(6), (c)(7), (c)(9), and (d)(5) it does not include any tax-qualified employee stock benefit plan or non-tax-qualified employee stock benefit plan in which a person has a substantial beneficial interest or serves as a trustee or in a similar fiduciary capacity, and that, for the purposes of § 563b.3(c)(8) does not include any tax-qualified employee stock benefit plan.

* * * * *

(37) *Tax-qualified employee stock benefit plan.* A "tax-qualified employee stock benefit plan" is any defined benefit plan or defined contribution plan, such as an employee stock ownership plan, stock bonus plan, profit-sharing plan or other plan, which, with its related trust meets the requirements to be "qualified" under section 401 of the Internal Revenue Code. A "non-tax-qualified employee stock benefit plan" is any defined benefit plan or defined contribution plan which is not so qualified.

* * * * *

Subpart A—Standard Conversions

14. Amend § 563b.3 by revising paragraphs (c)(6)(i), (c)(7), (c)(8), (c)(9), by adding new paragraphs (c)(23) and (c)(24); by revising the introductory text of paragraph (d)(3) and revising paragraphs (d)(4), (d)(5), (f)(3), (g)(1), and (i)(3); by adding new paragraph (i)(5)(v); and by revising paragraph (i)(6) to read as follows:

§ 563b.3 General principles for conversion.

* * * * *

(c) * * *

(6) * * *

(i) Subject to the adoption in the plan of conversion of the optional provision of paragraph (d)(5) of this section, a condition limiting purchases in the public offering or the direct community offering by any person together with any associate or group of persons acting in concert to not more than five percent (5%) of the total offering of shares, except that any one or more tax-qualified employee stock benefit plans may purchase in the aggregate not more than ten percent (10%) of the total offering of shares and shall be entitled to purchase such amount regardless of the number of shares to be purchased by other parties, and that shares held by one or more tax-qualified or non-tax-qualified employee stock benefit plans and attributed to a person shall not be aggregated with other shares purchased directly by or otherwise attributable to that person.

* * * * *

(7) Subject to the adoption in the plan of conversion of the optional provision of paragraph (d)(5) of this Section, provide that the total of shares which any person and any associate or group of persons acting in concert may subscribe for or purchase in the conversion shall not exceed five percent (5%) of the total offering of shares, except that any one or more tax-qualified employee stock benefit plans may purchase in the aggregate not more than ten percent (10%) of the total offering of shares, and shall be entitled to purchase this quantity regardless of the number of shares to be purchased by other parties, and that shares held by one or more tax-qualified or non-qualified employee stock benefit plans and attributed to a person shall not be aggregated with shares purchased directly by or otherwise attributable to that person.

(8) Provide that the officers and directors of the converting institution and their associates may purchase in the conversion, up to thirty-five percent (35%) of the total offering of shares of the converting institution provided that the converting institution has less than $50 million in total assets, and up to twenty-five percent (25%) in the total offering of shares if the converting institution has more than $500 million in total assets. If the converting institution has between $50 million and $500 million, in total assets, the maximum percentage shall be equal to thirty-five percent (35%) minus one percent (1%) multiplied by the quotient of the total assets less $50 million divided by $45 million. For example, for a converting institution with $275 million in total assets, the percentage will be thirty percent (30%), calculated as thirty-five percent (35%) minus one percent (1%) multiplied by the quotient of $275 million less $50 million, or $225 million, divided by $45 million, which equals five, or five percent (5%), which when subtracted leaves a difference of thirty percent (30%). In calculating the number of shares which may be purchased, any shares attributable to the officers and directors and their associates but held by one or more tax-qualified employee stock benefit plans shall not be included. In the case of merger conversions undertaken pursuant to § 563b.10(c), any shares owned prior to the merger conversion by officers, directors, and their associates shall not be included in calculating the aggregate amount which may be purchased by such persons.

(9) Provide that an officer or director, or his associates, shall not purchase, without the prior written approval of the Corporation, the capital stock of the converted insured institution except

from a broker or dealer registered with the Securities and Exchange Commission, for a period of three years following the date of the conversion; except that, this paragraph (c)(9) shall not apply to (i) negotiated transactions involving more than one percent (1%) of the outstanding capital stock of the converted insured institution, or (ii) purchases of stock made by and held by any one or more tax-qualified or non-tax-qualified employee stock benefit plan which may be attributable to individual officers or directors.

* * * * *

(23) Provide that a tax-qualified employee stock benefit plan has a priority to purchase conversion stock prior to eligible and supplemental accountholders and voting members who have subscription rights.

(24) May make scheduled discretionary contributions to a tax-qualified employee stock benefit plan provided such contributions do not cause the association to fail to meet its regulatory capital requirement.

(d) * * *

(3) That directors, officers and employees of the converting insured institution shall receive without payment nontransferable subscription rights to purchase shares of capital stock that are available after satisfying the subscriptions of eligible account holders, supplemental eligible account holders, voting members, and tax-qualified employee stock benefit plans provided for under paragraphs (c) (2), (4), (5), and (23) of this section, subject to the following conditions:

* * * * *

(4) Any account holder receiving rights to purchase stock in the subscription offering, shall also receive, without payment, non-transferable subscription rights to purchase up to one percent of the total offering of shares of capital stock, to the extent that such shares are available after satisfying the subscriptions provided for under paragraphs (c) (2), (4), (5), and (23) of this section, subject to such conditions as may be provided in the plan of conversion. In the event of an oversubscription for such additional shares, the shares available shall be allocated among the subscribing eligible account holders, supplemental eligible account holders and voting members on such equitable basis, related to the amounts of their respective subscriptions, as may be provided in the plan of conversion. Where possible such subscriptions shall be allocated in such a manner that total purchases by eligible account holders, supplemental eligible account holders, and voting members shall be rounded to the nearest 100 shares.

(5) That purchases in the public offering or in the direct community offering by any person together with any associate or group of persons acting in concert shall be limited to less than ten percent (10%) of the total offering of shares, provided that orders for conversion stock exceeding five percent (5%) of the total offering of shares shall not exceed in the aggregate ten percent (10%) of the total offering of shares, except that tax-qualified employee stock benefit plans may purchase in the aggregate up to ten percent (10%) of the total offering and not be included in the order limit.

* * * * *

(f) * * *

(3) In the event of a complete liquidation of the converted insured institution (and only in such event), each eligible account holder and supplemental eligible account holder shall be entitled to receive a liquidation distribution from the liquidation account, in the amount of the then current adjusted subaccount balances for savings accounts held, before any liquidation distribution may be made with respect to capital at the time of the conversion in exchange for the surrender of mutual capital certificates issued by the institution prior to conversion. A merger, consolidation, sale of bulk assets, or similar combination or transaction with another FSLIC-insured institution is not considered a complete liquidation for these purposes, and in such a transaction the liquidation account would be assumed by the surviving institution. Preferred stock issued in exchange for mutual capital certificates may receive distributions in liquidation prior to distribution from the liquidation account to the holders of the mutual capital certificates that would have been entitled to priority over the residual rights of depositors had the institution not been converted as of the date of liquidation.

* * * * *

(g) * * *

(1) No converted insured institution shall for a period of three years from the date of the completion of the conversion repurchase any of its capital stock from any person, except that this restriction shall not apply to either (i) a repurchase, on a pro rata basis pursuant to an offer approved by the Corporation and made to all shareholders of such institution, (ii) the repurchase of qualifying shares of a director, or (iii) a purchase in the open market by a tax-qualified or non-tax-qualified employee stock benefit plan in an amount reasonable and appropriate to fund the plan.

* * * * *

(i) * * *

(3) *Prohibition on offers to acquire and acquisitions of stock for three years following conversion.* For a period of three years following the date of the completion of the conversion, no person shall directly or indirectly, offer to acquire or acquire the beneficial ownership of more than ten percent of any class of an equity security of an insured institution converted in accordance with the provisions of this Part 563b, without the prior written approval of the Corporation. Where any person, directly or indirectly, acquires beneficial ownership of more than ten percent of any class of any equity security of an insured institution converted in accordance with Part 563b, without the prior written approval of the Corporation as required by this section, the securities beneficially owned by such person in excess of ten percent shall not be counted as shares entitled to vote and shall not be voted by any person or counted as voting shares in connection with any matter submitted to the stockholders for a vote. For the purposes of this section, a person shall be deemed to have acquired beneficial ownership of more than ten percent (10%) of a class of equity security of an insured institution where the person holds any combination of stock or revocable or irrevocable proxies of the institution under circumstances that give rise to a conclusive control determination or rebuttable control determination under § 574.4 (a) and (b) of this chapter.

* * * * *

(5) * * *

(v) Paragraphs (i)(1), (i)(2) and (i)(3) of this subsection shall not apply to the acquisition of securities by any one or more tax-qualified employee stock benefit plans, provided that, the plan or plans do not have beneficial ownership in the aggregate of more than twenty-five percent (25%) of any class of equity security of the converted institution.

(6) *Criteria for approval.* The Corporation may deny an application involving an offer or, acquisition of any security or proxies to vote securities of a converted association submitted under paragraphs (i) (3) or (4) of this section if it finds that (i) the proposed acquisition would frustrate the purposes of the provisions of this Part 563b; (ii) would be manipulative or deceptive; (iii) would subvert the fairness of the conversion; (iv) would be likely to result in injury to the association; (v) would not be

consistent with economical home financing; (vi) would otherwise be violative of law or regulation; or (vii) would not contribute to the prudent deployment of the institution's conversion proceeds.

* * * * *

15. Part 563b is amended by removing § 563b.3(i)(8)(v).

16. Amend § 563b.7 by revising paragraphs (a) and (e) to read as follows:

§ 563b.7 Pricing and sale of securities.

(a) *General.* (1) No offer to sell securities of an applicant pursuant to a plan of conversion may be made prior to approval by the Corporation of the application for conversion and until the proxy statement has been authorized for use by the Corporation.

(2) No offering circular may be transmitted to any person in connection with an offer or sale of a security that is the subject of a plan of conversion which has been filed with the Board unless the offering circular meets the requirements of this part or section 563g.

(3) No sale of securities may be made except by means of a final offering circular which has been declared effective by the Corporation.

(4) The provisions of § 563b.7(a) shall not apply to preliminary negotiations or agreements between an applicant and any underwriter or among underwriters who are to be in priority of contract with the applicant.

* * * * *

(e) *Underwriting expenses.* Underwriting commissions shall not exceed an amount or percentage per share accepted as reasonable by the Corporation or its delegate. No underwriting commission shall be allowed or paid with respect to shares of capital stock sold in the subscription offering unless the plan of conversion contains the optional provision permitted by § 563b.3(d)(12) of this Part; however, an underwriter may be reimbursed for accountable expenses in connection with the subscription offering where the public offering is limited such that reasonable underwriting commissions thereon would not be sufficient to cover total accountable expenses and, in the case in which no public offering occurs, an underwriter may be paid a consulting fee reasonable under the circumstances as the Corporation shall accept. The term "underwriting commissions" includes underwriting discounts.

* * * * *

17. Amend § 563b.10 by redesignating paragraph (c) as paragraph (c)(1); and by adding a new paragraph (c)(2) to read as follows:

§ 563b.10 Conversion of an insured institution in connection with an acquisition by an existing holding company; conversion of an insured institution through merger with an insured stock institution.

* * * * *

(c) *Merger with an existing insured stock institution.* (1) * * *

(2) An insured institution that qualifies for a voluntary supervisory conversion under Subpart C, or a modified conversion under Subpart D of this Part, also may convert to stock form by merging with an interim federal or state chartered stock institution in a transaction in which stock of the resulting institution is issued.

(i) Following the date of the completion of a merger conversion of an institution that qualifies for a voluntary supervisory conversion in accordance with Subpart C of this Part, § 563b.3(i)(3) shall be applicable with respect to the equity securities of the resulting institution for the period specified in subsection (ii) below.

(ii) The period specified shall be six months if the converting insolvent institution has between $100 million and $250 million in total assets; twelve months if the converting insolvent institution has between $250 million and $500 million in total assets; eighteen months if the converting insolvent institution has between $500 and $750 million in total assets; twenty-four months, if the converting insolvent institution has between $750 million and $1 billion in total assets; thirty months if the converting insolvent institution has between $1 and $2 billion in total assets; and thirty-six months if the converting insolvent institution has more than $2 billion in total assets. In all of the foregoing cases, total assets shall be calculated at the end of the fiscal quarter of the converting institution concluded immediately prior to the filing of the voluntary supervisory merger conversion application.

Subpart C—Voluntary Supervisory Stock Conversion

18. Amend Part 563b by revising § 563b.20 to read as follows:

§ 563b.20 Scope of subpart.

(a) Except as the Board may otherwise determine, the provisions of this subpart shall govern the voluntary supervisory conversion from the mutual to stock form of FSLIC-insured institutions and FDIC-insured institutions converting to federal stock form as authorized or ordered by the Board pursuant to sections 5(i) (1) and (2) and 5(p) of the Home Owners' Loan Act, 12 U.S.C. 1464(i) (1), (2), (p), and, with respect to FSLIC-insured institutions, section 402(j) of the National Housing Act, 12 U.S.C. 1725(j), and the voluntary supervisory conversion to federal stock form of FDIC-insured savings banks as certified by the FDIC and as concurred in by the Board pursuant to section 5(o)(2)(F) of the Home Owners' Loan Act, 12 U.S.C. 1464(o)(2)(F).

(b) The determination to authorize or order a voluntary supervisory conversion of a FSLIC-insured institution, to authorize a voluntary supervisory conversion of an FDIC-insured savings bank, or to concur in the certification of the FDIC regarding a FDIC-insured savings bank, shall be in the sole discretion of the Board or its delegate.

(c) All of the provisions of Subpart A of this Part shall apply to a supervisory conversion undertaken pursuant to this Subpart unless clearly inapplicable.

19. Amend Part 563b by revising § 563b.21 to read as follows:

§ 563b.21 Voluntary supervisory conversions.

A voluntary supervisory conversion of an FSLIC-insured institution or a FDIC-insured savings bank may be accomplished through the sale of the institution's or savings bank's securities issued in the conversion directly to a person or persons. Such a conversion may also occur through the merger of the institution or savings bank into a stock savings and loan association or stock savings bank newly-chartered for the purpose of facilitating the conversion. At least a majority of the board of directors of the converting institution or savings bank shall adopt a plan of voluntary supervisory conversion that is in accordance with the provisions of this Subpart. The members of the institution shall have no rights of approval or participation in the voluntary supervisory conversion, or to the continuance of any legal or beneficial ownership interest in the converted institution or savings bank.

20. Part 563b is further amended as follows:

§ 563b.24 [Removed]

A. Section 563b.24 is removed.

§§ 563b.22 and 563b.23 [Redesignated as §§ 563b.23 and 563b.24]

B. Section 563b.23 is redesignated as § 563b.24 and revised to read as set forth below.

C. Section 563b.22 is redesignated as § 563b.23 and revised to read as set forth below.

D. A new § 563b.22 is added to read as set forth below:

§ 563b.22 Purpose of subpart.

The purpose of this subpart is to give guidance to insured institutions and potential acquirors of the stock of converting insured institutions regarding the qualification of insured institutions for a supervisory conversion under this subpart, and guidance as to the extent to which the Board will permit, by means of a supervisory conversion, deviations from the substantive and procedural requirements adopted by the Board for standard conversions under Subpart A of this part.

§ 563b.23 Authorization of supervisory conversions.

The Board will consider authorizing or ordering a supervisory stock conversion if the insured institution files an application containing the information and documents specified in §563b.27 of this part, in accordance with the procedures specified in § 563b.28 of this subpart, and meets the qualification standards specified in § 563b.24 of this subpart. If the Board authorizes or orders a supervisory stock conversion, the conditions specified in § 563b.29 of this subpart must be fulfilled and the converted insured institution and the purchaser or purchasers of its conversion stock must comply with the requirements of § 563b.30 of this subpart.

§ 563b.24 Qualification for supervisory conversion of FSLIC-insured institutions.

The Board in its discretion may authorize the supervisory conversion of an insured institution when:

(a) The institution's liabilities exceed its assets, as calculated under generally accepted accounting principles on a going concern basis, and

(b) The institution would be a viable entity as determined under § 563b.26 of this part following the conversion.

21. Part 563b is further amended as follows:

§§ 563b.25, 563b.28, 563b.31, 563b.32 and 563b.33 [Removed]

A. Sections 563b.25, 563b.28, 563b.31, 563b.32, and 563b.33 are removed.

B. Section 563b.30 is revised to read as set forth below.

C. Section 563b.29 is revised to read as set forth below.

D. New §§ 563b.28, 563b.31 and 563b.32 are added to read as set forth below.

E. Section 563b.27 is revised to read as set forth below.

F. Section 563b.26 is revised to read as set forth below.

G. New § 563b.25 is added to read as set forth below.

The revised and added material reads as follows:

§ 563b.25 Qualification for supervisory conversion of FDIC-insured institutions.

(a) The Board may, in its discretion, concur with the determination of the Federal Deposit Insurance Corporation ("FDIC") that an FDIC-insured mutual savings bank qualifies for a voluntary supervisory conversion if the FDIC certifies to the Board in accordance with section 5(o)(2)(F) of the Home Owners' Loan Act of 1933, 12 U.S.C. 1464 (o)(2)(F), that severe financial conditions exist that threaten the stability of the savings bank and that the voluntary supervisory conversion is likely to improve the financial condition of the savings bank; or

(b) The Board may, in its discretion, authorize an FDIC-insured institution to undergo a voluntary supervisory conversion to Federal stock form if the following conditions have been met: (i) the institution's liabilities exceed its assets, as calculated under generally accepted accounting principles, assuming the institution is a going concern; and (ii) (A) a sufficient amount of permanent capital stock is issued in connection with the voluntary supervisory conversion to allow the institution to meet its capital requirement as established by the FDIC immediately upon completion of the conversion; or (B) the FDIC has indicated that, based upon the institution's proposed post-conversion operating plan, the institution would achieve a capital level acceptable to the FDIC within a period satisfactory to the FDIC.

§ 563b.26 Viability of converted insured institution.

(a) An application of an insured institution to convert pursuant to this subpart may be approved by the Board in its discretion if it finds that the FSLIC-insured institution will be a "viable entity" following the conversion.

(b) A converting FSLIC-insured institution is a "viable entity" if either subsection (b)(1) or (b)(2), and subsection (b)(3) are met.

(1) As part of the plan of conversion, the prospective acquirer shall infuse sufficient capital at the conversion to enable the institution to achieve a ratio of net worth to total liabilities, equal to the greater of (i) three percent (3%) of liabilities, computed on the basis of generally accepted accounting principles, or (ii) the institution's regulatory capital requirement established under § 563.13.

(2) As part of the plan of conversion, the prospective acquirer shall (i) infuse sufficient capital at the conversion to enable the institution to achieve a ratio of net worth to total liabilities, computed on the basis of generally accepted accounting principles, of at least one percent (1%) of total liabilities, and (ii) agree in writing with the Corporation that the acquirer will infuse additional capital as necessary to enable the institution to increase its regulatory capital on a scheduled basis in order to comply with the Board's regulatory capital requirements in effect from time to time within five years of the date of conversion, *and* agree that upon failure to achieve scheduled regulatory capital levels on or before the due date or to adhere in all material aspects to the business plan submitted as part of the supervisory conversion application, the acquirer shall be subject to such sanctions as the Board, in connection with its approval of the supervisory conversion application, directs to be included in the written agreement, and

(3) The transaction taken as a whole is in the best interests of, and does not present the potential for injury to, the converting institution, its depositors and the FSLIC.

§ 563b.27 Application for voluntary supervisory stock conversion.

An insured institution may apply for Board approval of a voluntary supervisory conversion pursuant to this subpart by filing the following information and documents in accordance with the procedures specified in § 563b.28 of this subpart:

(a) A plan of conversion adopted by the board of directors of the institution, which shall contain at a minimum, the name and address of the insured institution; the names, addresses, dates and places of birth, and social security numbers of the proposed purchasers of conversion stock and their relationship to the insured institution; the title, per-unit par value, number, and per-unit and aggregate offering price of shares of conversion stock to be authorized and issued; the number and percentage of shares of conversion stock to be purchased by each investor, the aggregate number and percentage of shares of conversion stock to be purchased by directors, officers or their affiliates and associates (as defined in § 563b.2(a) of this part); the form of consideration to be paid for the conversion stock; and certified copies of

all resolutions of the board of directors relating to the Plan.

(b) A copy of any agreements between the insured institution and the proposed conversion stock purchasers.

(c) An opinion of qualified, independent counsel or an independent, certified public accountant regarding the tax consequences to the insured institution arising from the conversion, or an Internal Revenue Service ruling that the transaction qualifies as a tax-free reorganization.

(d) The business plan which shall contain a description of the proposed operating policies of the insured institution following the conversion, including a statement as to how the conversion proceeds will be used, and a projection of the insured institution's results of operations for the three-year period following completion of the conversion. The insured institution shall specify the assumptions on which its projections are based.

(e) A savings and loan holding company application or a Change-in-Control Act notice for each proposed conversion stock purchaser as required by § 574.3 of this subchapter, whichever is applicable, and the certifications required by Memorandum SP–51 issued by ORPOS.

(f) The proposed charter and bylaws of the converted insured institution.

(g) The proposed stock certificate form.

(h) A description of all existing and proposed employment contracts, if applicable.

(i) All filings required under the securities offering rules of 12 CFR Parts 563b and 563g.

(j) A subordinated debt application, if applicable.

(k) Applications for permission to organize a stock institution, Federal Home Loan Bank membership, insurance of accounts, and merger, if applicable.

(l) An opinion of an independent certified public accountant regarding the appropriateness of the accounting treatment for the transaction and the conformity of such accounting treatment to generally accepted accounting principles and Memorandum No. R–55 of ORPOS.

(m) Information to support the value of any non-cash assets to be contributed to the insured institution in connection with the voluntary supervisory conversion, if applicable. Appraisals submitted in this connection must be acceptable to the Board and, in the case of real estate assets, meet the standards of Memorandum No. R–41c of ORPOS.

(n) A description of the estimated expenses of the voluntary supervisory conversion to the insured institution.

(o) An audited balance sheet (i) prepared in accordance with generally accepted accounting principles of a date within 90 days of the date of submission of the conversion application; (ii) prepared by an auditor, and in the form of an audit report, both of which meet the requirements of Article 2 of Regulation S–X, 17 CFR 210.2; and (iii) which reflects a debit balance in retained earnings;

(p) *Pro forma* financial statements applying "push down" purchase accounting to the financial statements described in (o) above, and which reflect stockholders' equity equal to at least (i) 3 percent of the institution's total liabilities; (ii) the institution's regulatory capital requirement under § 563.13; or (iii) 1 percent of the institution's total liabilities.

(q) An opinion of independent counsel that the voluntary supervisory conversion of a state-chartered insured institution to state stock form is authorized under applicable state law, if applicable.

(r) A specific description of any of the features of the insured institution's application that do not conform to the requirements of this subpart.

(s) A specific description of and detailed justification for any waivers or supervisory forbearances that are requested as part of the voluntary supervisory conversion.

§ 563b.28 Procedural Requirements.

(a) *Filing of voluntary supervisory conversion application.* An insured institution seeking to convert pursuant to this subpart shall file an original and one copy of its supervisory conversion application containing the information and documents specified in § 563b.27 of this subpart with the Corporate and Securities Division of the Board's Office of General Counsel, with one copy each to ORPOS and to the appropriate Principal Supervisory Agent ("PSA"). The application shall be deemed to be filed on the date received by the Corporate and Securities Division.

(b) *Incomplete application.* An application for supervisory stock conversion that does not contain all of the applicable information and documents specified in § 563b.27 shall constitute an incomplete application, and the PSA shall continue to seek other appropriate supervisory resolutions of the institution's financial condition pending the filing of a complete application.

(c) The Board delegates to the General Counsel or his designee, the authority to approve applications for voluntary supervisory conversions, and to exercise the authority of the Board pursuant to this section, provided that (i) the application does not present a significant issue of law or policy, and (ii) that ORPOS does not raise supervisory objection to the application based upon significant unresolved supervisory issues with respect to the financial or managerial resources of the converting institution, the items specified in §§ 563b.24, 563b.25, and 563b.26, or the items required to be submitted pursuant to subsections (b), (d), (h), (j), (l), (m), (n), (o), (p), (r) and (s) of § 563b.27.

(d) *Termination or amendment of charter.* (1) Upon Board approval of a plan of supervisory stock conversion of a state-chartered insured institution or a Federally-chartered insured institution which is converting to a state-chartered stock insured institution, the mutual charter of such insured institution shall terminate upon the issuance to it of a stock charter under the laws of the state in which its home office is located. If such converting insured institution is a Federally-chartered insured institution, its Federal charter shall be surrendered promptly to the Board for cancellation. An insured institution converting to a state-chartered stock insured institution shall promptly file with the Corporation a copy of the stock charter issued to it. The certificate of insurance of such insured institution shall be surrendered promptly to the Corporation for amendment or cancellation, and the Corporation shall promptly issue an amended or new certificate of insurance to the converted insured institution.

(2) A Federally-chartered mutual insured institution converting to a Federally-chartered stock insured institution shall apply to amend its charter and bylaws to read in the form of charter and bylaws for a Federal stock charter. The effective date of such amendment shall be stated in the Board's resolution approving the conversion.

(3) The corporate existence of a Federally-chartered mutual insured institution converting to a Federally-chartered stock insured institution shall be deemed to be a continuation of the entity of the institution so converted. In the case of a state-chartered mutual insured institution converting to a state-chartered stock insured institution, unless state law otherwise prescribes, the corporate existence of the converting mutual insured institution shall similarly not terminate and the converted insured institution shall be deemed to be a continuation of the

entity of the insured institution so converted.

§ 563b.29 Conditions of approval.

Board approval of a supervisory conversion application will be conditioned upon the following:

(a) Completion of the sale of conversion stock within a maximum of three months after the Board approves the application, or within such additional period as the General Counsel or his designee may for good cause grant;

(b) Compliance with all filing requirements of 12 CFR Parts 563b and 563g;

(c) Submission of an opinion of independent legal counsel that all applicable state securities law requirements have been met in connection with the sale of the institution's conversion stock;

(d) Compliance with all applicable laws, rules, and regulations; and

(e) Satisfaction of any other requirement or conditions the Board or its delegate may impose.

§ 563b.30 Sale of conversion stock.

Each insured institution that converts pursuant to this Subpart shall offer and sell its conversion stock pursuant to the requirements of 12 CFR Part 563g.

§ 563b.31 Expenses.

Expenses incurred by an insured institution in connection with its voluntary supervisory conversion application shall be reasonable and, with respect to a FSLIC-insured institution, shall not be in an amount such that the payment of such expenses would render the proceeds to the institution from the sale of its conversion stock insufficient to satisfy the viability requirement of § 563b.26 of this subpart.

§ 563b.32 Employment contracts.

An applicant for voluntary supervisory conversion must justify any employment contract incidental to the conversion, and otherwise demonstrate that the making of such an employment contract by an insured institution would not be an unsafe or unsound practice or represent a sale of control. The Board shall determine the permissibility of such contract based upon, at a minimum, the applicant's justification for the contract, the term, salary, and severance provisions of the contract, the identity and background of the officer or employee who is subject to the employment contract, and the amount of the conversion stock to be purchased by such officer or employee or his affiliates or associates. Any employment contract incident to a voluntary supervisory conversion with a term in excess of one year granted to existing management of an insured institution generally will be disfavored.

Subpart D—Guidelines for Modified Conversions

22. Part 563b is further amended as follows:

A. Sections 563b.34, 563b.39, and 563b.40 are revised to read as set forth below.

§ 563b.38 [Removed]

B. Section 563b.38 is removed.

§§ 563b.35–563b.37 [Redesignated as §§ 563b.36, 563b.37 and 563b.38]

C. Section 563b.37 is redesignated as § 563b.38 and revised to read as set forth below.

D. Section 563b.36 is redesignated as the new § 563b.37 and revised to read as set forth below.

E. Section 563b.35 is redesignated as the new § 563b.36 and revised to read as set forth below.

F. New §§ 563b.35 and 563b.41 are added to read as set forth below.

§ 563b.34 Scope of subpart.

(a) This subpart establishes guidelines for modified conversion from the mutual to stock form of insured institution as authorized or ordered by the Board pursuant section 5(i) (1) and (2) and 5(p) of the Home Owners' Loan Act, 12 U.S.C. 1464 (i) (1) and (2), (p) and section 402(i) of the National Housing Act, 12 U.S.C. 1725(j) or of an FDIC-insured savings bank as concurred in by the Board pursuant to section 5(o) of the Home Owners' Loan Act, 12 U.S.C. 1464(o).

(b) The provisions of this subpart are not exclusive and may be waived by the Board.

§ 563b.35 Modified stock conversion.

A modified conversion generally is available to an institution that fails to meet its regulatory capital requirement. In a modified conversion, the substantive and procedural rights granted to members in mutual insured institutions converting under Subpart A may be restricted in order to meet the needs of an insured institution whose financial condition has deteriorated such that a standard conversion which would raise sufficient capital to enable the institution to achieve a solid capital base is not feasible. Modified conversions may be effected without the approval of members, must involve sales of conversion stock at an aggregate price in excess of the *pro forma* market value of the institution as determined by an independent appraiser, and involve the limitation of members' preemptive rights.

§ 563b.36 Purpose of subpart.

The purpose of this subpart is to give guidance to insured institutions and potential acquirors of the stock of insured institutions regarding the qualification of insured institutions for a modified conversion under this subpart, and guidance as to the extent to which the Board will permit, by means of a modified conversion, deviance from the substantive and procedural requirements adopted by the Board for standard conversions under Subpart A of this part.

§ 563b.37 Qualification for modified conversion.

(a) The Board may, in its discretion, approve or order a modified conversion if it finds that: (1) the insured institution does not meet its regulatory capital requirement calculated according to generally accepted accounting principles; and (2) that the projected net proceeds of the sale of conversion stock by the insured institution in a standard conversion under Subpart A, as demonstrated by an appraisal determined to be acceptable to the Board, would not be sufficient to enable the institution to meet its regulatory capital requirement computed in accordance with generally accepted accounting principles.

(b) The Board may, in its discretion, concur that an FDIC-insured mutual savings bank qualifies for a modified conversion to federally-chartered stock savings bank form if the Federal Deposit Insurance Corporation certifies to the Board in accordance with section 5(p)(2)(F)–(H) of the Home Owners' Loan Act that severe financial conditions exist that threaten the stability of the savings bank and conversion to the federally-chartered stock savings bank form is likely to improve the financial condition of the savings bank.

§ 563b.38 Authorization of modified conversion.

(a) All of the provisions of Subpart A of this part shall apply to a conversion undertaken pursuant to the subpart unless clearly inapplicable.

(b) The Board may authorize the conversion to the stock form of an insured institution under this subpart upon the filing of an application approved by resolution of the majority of the board of directors of the institution, but neither the Board nor the institution is required to secure the prior approval of the institution's members of the conversion.

(c) An insured institution that has converted to the stock form pursuant to this subpart is required to establish a liquidation account on behalf of the institution's members as required under § 563b.3(f) of this part.

(d) An insured institution converting under this Subpart D shall sell its stock at an aggregate price exceeding the estimated *pro forma* market value of the institution, including an appropriate control premium, based on an independent valuation determined to be acceptable by the Board, as provided in § 563b.7 of this part.

(e) The Board may, in its discretion, approve an application for conversion pursuant to this subpart if it is demonstrated to the Board's satisfaction, through a submission prepared by an independent appraiser investment banking firm or other qualified person, that (1) the net capital to be received from the sale by the converting insured institution of its capital stock pursuant to this subpart, would cause the insured institution to meet its regulatory capital requirement computed in accordance with generally accepted accounting principles and (2) the transaction would benefit the institution, its depositors, and the FSLIC.

(f) The eligible accountholders, the supplemental eligible accountholders, and the voting members, if any, of the insured institution converting pursuant to this subpart shall be granted subscription rights to purchase the stock proposed to be issued by the insured institution, in accordance with the rules and regulations of Subpart A of this part, except that such subscription rights may be reduced as follows: (1) If the regulatory capital of the institution is between 0 percent of an institution's liabilities and one-third of its regulatory capital requirement under § 563.13, such subscription rights may be reduced to an amount between 0 percent and 20 percent of the total offering, such percentage to be determined on a sliding sale on the basis of the institution's regulatory capital; (2) if the regulatory capital of the institution is more than one-third but not in excess of two-thirds of its regulatory capital requirement under § 563.13, subscription rights may be reduced to an amount between 20 percent and 50 percent of the total offering, such percentage to be determined on a sliding scale of the basis of the institution's regulatory capital; and (3) if the regulatory capital of the institution is more than two-thirds of its regulatory capital requirement but not in excess of the institution's regulatory capital requirement, subscription rights may be reduced to an amount between 50 percent and 100 percent of the total offering, such percentage to be determined on a sliding scale on the basis of the institution's regulatory capital. Regulatory capital for purposes of this paragraph shall be computed in accordance with generally accepted accounting principles.

(g) An acquiror of a controlling interest in an institution undertaking a modified conversion shall pay a control premium in such an amount and in such form determined to be acceptable by the Board.

(h) For three years following the date of completion of a modified conversion, any controlling shareholder or the converted institution may not acquire shares from minority shareholders without first obtaining prior Board approval of such purchases and offering fair value, as determined through an independent appraisal which takes into consideration the value of the institution on a "going concern" basis including, but not limited to, an evaluation of historical earnings, future prospects for earnings, financial conditions, any arms' length trades in the stock, net asset value, dividends record, investment value, and book value.

§ 563b.39 Application for modified conversion.

An insured institution may apply for Board approval of a modified conversion pursuant to this subpart by filing in accordance with the procedures specified in § 563b.8 of this part an application which includes the following information and documents:

(a) A plan of conversion adopted by the board of directors of the institution, which shall contain, at a minimum the name and address of the insured institution; the names, addresses, dates and places of birth, and social security numbers of the known proposed purchasers of conversion stock and their relationship to the insured institution; the method of stock sale; the title, per-unit par value, number, and per-unit and aggregate offering price of shares of conversion stock to be authorized and issued; the number and percentage of shares of conversion stock to be purchased by each investor, the aggregate number and percentage of shares of conversion stock to be purchased by directors, officers or their affiliates and associates (as defined in § 563b.2(a) of this part); the form of consideration to be paid for the conversion stock; and certified copies of all resolutions of the board of directors relating to the plan.

(b) A copy of any agreements between the insured institution and the proposed conversion stock purchasers.

(c) An opinion of qualified, independent counsel or an independent, certified public accountant regarding the tax consequences to the insured institution arising from the conversion, or an Internal Revenue Service ruling that the transaction qualifies as a tax-free reorganization.

(d) A business plan acceptable to the appropriate Federal Home Loan Bank and ORPOS, which shall contain a description of the proposed operating policies of the insured institution following the conversion, including a statement as to how the conversion proceeds will be used, and a projection of the insured institution's results of operations for the three-year period following completion of the conversion. The insured institution shall specify the assumptions on which its projections are based.

(e) A savings and loan holding company application or a Change-in-Control Act notice for each proposed conversion stock purchaser as required by § 574.3 of this subchapter, where applicable, and the certifications required by Memorandum SP–51 issued by ORPOS.

(f) The proposed charter and bylaws of the converted insured institution.

(g) The proposed stock certificate form.

(h) A description of all existing and proposed employment contracts, if applicable.

(i) All filings required under the securities offering rules of 12 CFR Part 563b and 563g.

(j) A subordinated debt application, if applicable.

(k) Applications for permission to organize a stock institution, Federal Home Loan Bank membership, insurance of accounts, and merger, if applicable.

(l) An opinion of an independent certified public accountant regarding the appropriateness of the accounting treatment for the transaction and the conformity of such accounting treatment to generally accepted accounting principles and Memorandum No. R–55 of ORPOS.

(m) Information to support the value of any non-cash assets to be contributed to the insured institution in connection with the modified conversion. Appraisals must be acceptable to the Board and, in the case of real estate assets, submitted in this connection must meet the standards of Memorandum No. R–41c of ORPOS.

(n) A description of the estimated expenses of the modified conversion to the insured institution.

(o) An audited balance sheet prepared in accordance with generally accepted accounting principles as of a date within 90 days of the date of submission of the conversion application, (ii) prepared by an auditor and in the form of an audit report, both of which meet the requirements of Article 2 of Regulation S–X, 17 CFR 210.2, and (iii) which reflects a balance in retained earnings in an amount less than the institution's regulatory capital requirement calculated under § 563.13.

(p) An independent appraisal meeting the requirement of § 563b.7 which (i) describes the amount of capital that the institution could be expected to raise in standard conversion, stock offering, and (ii) supports the control premium proposed to be paid in the modified conversion.

(q) *Pro forma* financial statements which demonstrate that (i) as a result of an infusion of the amount of capital that could be expected to be raised in a standard conversion, the institution would not have an amount of stockholders' equity at least equal to the institution's required level of regulation capital under § 563.13, and (ii) as a result of the capital infusion proposed in the modified conversion, the amount of stockholders' equity would at least equal the level of the institution's required regulatory capital under § 563.13.

(r) An opinion of independent counsel that the modified conversion of a state-chartered insured institution to state stock form is authorized under applicable state law, if applicable.

(s) A specific description of any of the features of the insured institution's application that do not conform to the requirements of this subpart.

(t) A specific description of and detailed justification for any waivers or supervisory forbearances that are requested as part of the modified conversion.

§ 563b.40 Sale of stock.

(a) *General.* No offer to sell securities of an applicant pursuant to a plan of modified conversion may be made prior to approval by the Corporation of the application for conversion. No sale of securities may be made except by means of a final offering circular which has been declared effective by the Corporation.

(b) *Delegation.* The Board delegates to the General Counsel or his designee the authority of the Corporation to declare a final offering circular effective.

§ 563b.41 Procedural requirements.

(a) *Filing of modified conversion application.* An insured institution seeking to convert pursuant to this subpart shall file an original and one copy of its modified conversion application containing the information and documents specified in § 563b.39 of this subpart with the Corporate and Securities Division of the Board's Office of General Counsel, with one copy each to ORPOS and to the appropriate Principal Supervisory Agent ("PSA"). The application shall be deemed to be filed on the date received by the Corporate and Securities Division.

(b) *Incomplete application.* An application for modified stock conversion that does not contain all of the applicable information and documents specified in § 563b.39 shall constitute an incomplete application, and shall not be approved pending the filing of a complete application.

(c) The Board delegates to the General Counsel or his designee the authority to approve applications for modified conversions except in those applications presenting a significant issue of law or policy, and to exercise the authority of the Board pursuant to this section.

(d) *Termination or amendment of charter.* (1) Upon Board approval of a plan of modified stock conversion of a state-chartered insured institution or a Federally-chartered insured institution which is converting to a state-chartered stock insured institution, the mutual charter of such insured institution shall terminate upon issuance to it of a stock charter under the laws of the state in which its home office is located. If such converting insured institution is a Federally-chartered insured institution, its Federal charter shall be surrendered promptly to the Board for cancellation. An insured institution converting to a state-chartered stock insured institution shall promptly file with the Corporation a copy of the stock charter issued to it. The certificate of insurance of such insured institution shall be surrendered promptly to the Corporation for amendment or cancellation, and the Corporation shall promptly issue an amended or new certificate of insurance to the converted insured institution.

(2) A Federally-chartered mutual insured institution converting to a Federally-chartered stock insured institution shall apply to amend its charter and bylaws to read in the form of charter and bylaws for a Federal stock charter. The effective date of such amendment shall be stated in the Board's resolution approving the conversion.

(3) The corporate existence of a Federally-chartered mutual insured institution converting to a Federally-chartered stock insured institution shall be deemed to be a continuation of the entity of the institution so converted. In the case of a state-chartered mutual insured institution converting to a state-chartered stock insured institution, unless state law otherwise prescribes, the corporate existence of the converting mutual insured institution shall similarly not terminate and the converted insured institution shall be deemed to be a continuation of the entity of the insured institution so converted.

PART 574—ACQUISITION OF CONTROL OF INSURED INSTITUTIONS

23. The authority citation for 12 CFR Part 574 is revised to read to follows:

Authority: Sec. 407, 48 Stat. 1260, as amended (12 U.S.C. 1730); and Sec. 408; 82 Stat. 5, as amended (12 U.S.C. 1730a).

24. Amend § 574.2 by revising paragraph (c)(3) to read as follows:

§ 574.2 Definitions.

* * * * *

(c) * * *

(3) A person or company which acts in concert with another person or company ("other party") shall also be deemed to be acting in concert with any person or company who is also acting in concert with that other party, except that any tax-qualified employee stock benefit plan as defined in § 563b.2(a)(37) will not be deemed to be acting in concert with its trustee or a person who serves in a similar capacity solely for the purpose of determining whether stock held by the trustee and stock held by the plan will be aggregated.

* * * * *

25. Amend § 574.3 by adding a paragraph (c)(1)(vi) to read as follows:

§ 574.3 Acquisition of control of insured institutions.

* * * * *

(c) *Exempt transactions.*

(1) * * *

(vi) Acquisitions of up to twenty-five percent (25%) of a class of stock by a tax-qualified employee stock benefit plan as defined in § 563b.2(a)(37).

* * * * *

26. Amend § 574.4 by revising paragraph (d)(6) to read as follows:

§ 574.4 Control.

* * * * *

(d) * * *

(6) A person or company will be presumed to be acting in concert with any trust for which such person or company serves as trustee, except that a tax-qualified employee stock benefit plan as defined in § 563b.2(a)(37) shall not be presumed to be acting in concert

with its trustee or person acting in a similar fiduciary capacity solely for the purposes of determining whether to combine the holdings of a plan and its trustee or fiduciary.

* * * * *

27. Amend § 574.8 by adding new paragraphs (a)(1) (v) and (vi) to read as follows:

§ 574.8 Delegations of authority.

(a) * * *

(1) * * *

(v) Neither the insured institution to be acquired or the acquiror is required under § 563g.2 of this chapter to file an offering circular with the Board in connection with the acquisition.

(vi) The acquisition is not a part of a conversion under Part 563b of this chapter.

The Federal Home Loan Bank Board.

Jeff Sconyers,

Secretary.

[FR Doc. 86-24800 Filed 11-4-86; 8:45 am]

BILLING CODE 6720-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 86-AAL-3]

Revision of Transition Area at Galena, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule

SUMMARY: This action revises the transition area at Galena, AK. The revised transition area will provide additional controlled airspace from 1,200 feet above the surface (AGL) to the base of the overlying controlled airspace between the 40-mile radius of Galena VORTAC and 46-mile radius of Galena VORTAC. This action will allow the use of radar vectors routinely within a 40 nautical mile (NM) radius of Galena VORTAC between 1,200 feet AGL and 14,500 feet above mean sea level (AMSL.) This will permit the minimum vectoring altitude in this area to be lowered from 15,000 feet AMSL to 6,000 feet AMSL.

EFFECTIVE DATE: 0901 UTC, February 12, 1987.

FOR FURTHER INFORMATION CONTACT: Robert C. Durand, Procedures and Airspace Specialist, (AAL-536), Air Traffic Division, Federal Aviation Administration, 701 C Street, Box 14, Anchorage, AK 99513-0087, telephone (907) 271-5903.

SUPPLEMENTARY INFORMATION:

History

On August 26, 1986, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to revise the transition area at Galena, AK (51 FR 30373). Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Except for editorial changes, this amendment is the same as that proposed in the notice. Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6B dated January 2, 1986.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations will extend the base of controlled airspace at 1,200 feet above the surface, from within a 40-mile radius of the Galena VORTAC, to within a 46-mile radius of the Galena VORTAC, AK. This airspace designation will permit Galena Approach Control to vector departure and arrival aircraft below 15,000 feet AMSL within a 40 NM radius of the Galena VORTAC.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so mininal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Transition areas.

Adoption of the Amendment

PART 71—[AMENDED]

Accordingly, pursuant to the authority delegated to me, Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended, as follows:

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.181 [Amended]

2. Section 71.181 is amended as follows:

Galena, AK—[Amended]

By removing the words "40-mile" wherever it appears and substituting the words "46-mile".

Issued in Anchorage, Alaska, on October 28, 1986.

Henry A. Elias,

Manager, Air Traffic Division.

[FR Doc. 86-24941 Filed 11-4-86; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF COMMERCE

International Trade Administration

15 CFR Parts 372, 373, 374, 377, 379 and 390

[Docket No. 60972-6172]

Individual Validated Export Licenses; Longer Validity Periods and Amendments

AGENCY: Export Administration, International Trade Administration, Commerce.

ACTION: Interim rule and request for comments.

SUMMARY: The Export Administration Regulations (15 CFR Parts 368-399) are being amended to authorize a 24-month validity period for new individual validated licenses, extend the validity period of outstanding 12-month individual validated licenses for 12 additional months from the original expiration dates, and establish a 24-month validity period when required for reexports. Other than technical data licenses and reexport authorizations for technical data, amendments to extend individual validated licenses and reexport authorizations with 24-month validity periods will not be considered, except when warranted by extenuating circumstances. The rule adds a provision requiring submission of copies of the license application and export license with an amendment request.

Currently, technical data licenses and reexport authorizations are granted for 24-months and can be extended for additional 24-month periods. This rule provides for an initial validity period or an extension of greater than 24 months for a technical data license or reexport authorization, only when requested and justified. "Technical scope" of a project is defined, and a requirement is established that proposed changes in the

scope of a technical data license be submitted as amendments to the license.

Validity periods and extensions currently in effect for special validated licenses (including Distribution Licenses, Project Licenses, Qualified General Licenses, Service Supply Licenses and Humanitarian Licenses) and short supply licenses issued under 15 CFR Part 377 are not affected by this rule.

The changes in this rule are intended to improve the amendment process, to reduce the paperwork burden on the export community, and to assist U.S. exporters in maintaining their competitiveness in the international business community. Export Administration is currently reviewing the entire process of amending individual validated licenses. To assist Export Administration in this review, suggestions on improving the amendment process are being solicited, including comments on the changes effected by this interim rule, as well as other changes that would reduce paperwork and assist U.S. exporters. For example, under what circumstances should exporters be permitted, without formal amendment of the license, to increase the quantity and value of authorized exports, to substitute new models of equipment where parameters are unaffected, or to substitute notification to the Office of Export Licensing (OEL) for a formal amendment? Export Administration is particularly interested in receiving comments on a proposal now under consideration to remove the authority of the District Offices to take action on amendment requests (15 CFR 372.11(g)(2)). Comments on the changes effected by this interim rule, or suggestions for further changes in the amendment regulations relating to the amendment process, should be supported by an analysis of the paperwork reduction or other economic benefit associated with the proposal.

DATES: This rule is effective November 5, 1986. Comments must be received by December 5, 1986.

ADDRESS: Written comments (six copies) should be sent to: Joan Maguire, Regulations Branch, Export Administration, U.S. Department of Commerce, P.O. Box 273, Washington, D.C. 20044.

FOR FURTHER INFORMATION CONTACT: John Black or Patricia Muldonian, Regulations Branch, Export Administration, Department of Commerce, Washington, D.C. 20230 (Telephone (202) 377-2440).

SUPPLEMENTARY INFORMATION:

Regulatory Requirements

1. Because this rule concerns a foreign and military affairs function of the United States, it is not a rule or regulation within the meaning of section 1(a) of Executive Order 12291, and it is not subject to the requirements of that Order. Accordingly, no preliminary or final Regulatory Impact Analysis has to be or will be prepared.

2. This rule contains collections of information subject to the requirements of the Paperwork Reductions Act of 1980 (44 U.S.C.. 3501 et seq.) As this rule will effect a reduction in the number of applications required for export licenses, requests to amend licenses, and reexport authorization (Forms ITA-622P, ITA-685P, and ITA-699P), it decreases the regulatory burden on exporters. The collections of information have been approved by the Office of Management and Budget under control numbers of 0625-0001, 0625-0003, and 0625-0009.

3. Section 13(a) of the Export Administration Act of 1979, as amended (50 U.S.C. App. 2412(a)), exempts this rule from all requirements of section 553 of the Administrative Procedure Act (APA) (5 U.S.C. 553), including those requiring publication of a notice of proposed rulemaking, an opportunity for public comment, and a delay in effective date. This rule is also exempt from these APA requirements because it involves a foreign and military affairs function of the United States. Further, no other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this rule.

4. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule by section 553 of the Administrative Procedure Act (5 U.S.C. 553), or by any other law, under sections 603(a) and 604(a) of the Regulatory Flexibility Act (5 U.S.C. §§ 603(a) and 604(a)) no initial or final Regulatory Flexibility Analysis has to be or will be prepared.

However, because of the importance of the issues raised by these regulations, this rule is issued in interim form and comments will be considered in the development of final regulations. Accordingly, the Department encourages interested persons who wish to comment to do so at the earliest possible time to permit the fullest consideration of their views.

The period for submission of comments will close December 5, 1986. The Department will consider all comments received before the close of the comment period in developing final regulations. Comments received after the end of the comment period will be considered if possible, but their consideration cannot be assured. The Department will not accept public comments accompaned by a request that part or all of the material be treated confidentially because of its business proprietary nature or for any other reason. The Department will return such comments and materials to the person submitting the comments and will not consider them in the development of final regulations.

All public comments on these regulations and the entire amendment process will be a matter of public record and will be available for public inspection and copying. In the interest of accuracy and completeness, the Department requires comments in written form. Oral comments must be followed by written memoranda, which will also be a matter of public record and will be available for public review and copying. Communications from agencies of the United States Government or foreign governments will not be made available for public inspection.

The public record concerning these regulations and the entire amendment process will be maintained in the International Trade Administration Freedom of Information Records Inspection Facility, Room 4104, U.S. Department of Commerce, 14th Street and Pennsylvania Avenue, N.W., Washington, D.C. 20230. Records in this facility, including written public comments and memoranda summarizing the substance of oral communications, may be inspected and copied in accordance with regulations published in Part 4 of Title 15 of the Code of Federal Regulations. Information about the inspection and copying of records at the facility may be obtained from Patricia L. Mann, International Trade Administration Freedom of Information Officer, at the above address or by calling (202) 377-3031.

List of Subjects

15 CFR Parts 372, 373, and 374

Exports, Reporting and recordkeeping requirements.

15 CFR Part 377

Administrative practice and procedure, Exports, Forests and forest products, Petroleum, Reporting and recordkeeping requirements.

15 CFR Part 379

Computer technology, Exports, Reporting and recordkeeping requirements, Science and technology.

15 CFR Part 390

Administrative practice and procedure, Advisory committees, Exports.

Accordingly, Parts 372, 373, 374, 377, 379, and 390 of the Export Administration Regulations (15 CFR Parts 368–399) are amended as follows:

1. The authority citations for 15 CFR Parts 372 and 374 continue to read as follows:

Authority: Pub. L. 96–72, 93 Stat. 503, 50 U.S.C. App. 2401 *et seq.*, as amended by Pub. L. 97–145 of December 29, 1981, and by Pub. L. 99–64 of July 12, 1985; E.O. 12525 of July 12, 1985 (50 FR 28757, July 16, 1985).

2. The authority citations for 15 CFR Parts 373 and 379 continue to read as follows:

Authority: Pub. L. 96–72, 93 Stat. 503, 50 U.S.C. App. 2401 et seq., as amended by Pub. L. 97–145 of December 29, 1981, and by Pub. L. 99–64 of July 12, 1985; E.O. 12525 of July 12, 1985 (50 FR 28757, July 16, 1985); Pub. L. 95–223, 50 U.S.C. 1701 et seq.; E.O. 12532 of September 9, 1985 (50 FR 36861, September 10, 1985), as affected by notice of September 4, 1986 (51 FR 31925, September 8, 1986).

3. The authority citation for 15 CFR Part 377 continues to read as follows:

Authority: Pub. L. 96–72, 93 Stat. 503, 50 U.S.C. App. 2401 et seq., as amended by Pub. L. 97–145 of Dec. 29, 1981, and by Pub. L. 99–64 of July 12, 1985, E.O. 12525 of July 12, 1985 (50 FR 28757, July 16, 1985); sec. 103, Pub. L. 94–163, as amended, (42 U.S.C. 6212) as amended by Pub. L. 99–58 of July 2, 1985; sec. 28, Pub. L. 93–153, (30 U.S.C. 185); sec. 28, Pub. L. 95–372, (43 U.S.C. 1354); E.O. 11912 of April 3, 1976 (41 FR 15825, as amended); sec. 101 and 201(11)(e), Pub. L. 94–258, (10 U.S.C. 7420 and 7430(e); and Presidential Findings (50 FR 25189, June 18, 1985).

4. The authority citation for 15 CFR Part 390 continues to read as follows:

Authority: Pub. L. 96–72, 93 Stat. 503, 50 U.S.C. App. 2401 et seq., as amended by Pub. L. 99–145 of December 29, 1981, and by Pub. L. 99–64 of July 12, 1985; E.O. 12525 of July 12, 1985 (50 FR 28757, July 16, 1985); 50 U.S.C. 1701 et seq.; E.O. 12543 of January 7, 1986 (51 FR 875, January 9, 1986).

PART 372—[AMENDED]

5. Section 372.9 is amended as follows:

a. In paragraph (d)(1), revise the heading to read *"Twenty-four month validity period"*, in the first sentence revise the reference to "one year" to read "24 months", "June 11, 1979" to read "June 11, 1986", and "June 30, 1980" to read "June 30, 1988" and add to the end of the paragraph the sentence "See Part 373 for validity periods for special licenses, Part 377 for validity periods for short supply licenses, and Part 379 for validity periods for technical data licenses."

b. Paragraph (d)(2) is revised to read as follows:

§ 372.9 Issuance of validated licenses.

* * * * *

(d) * * *

(2) *Extended validity period.* A validity period in excess of 24 months generally will not be granted for commodities. However, the Office of Export Licensing will consider granting a validity period exceeding 24 months when extenuating circumstances warrant. For example, an extended validity period will generally be granted where the transaction is related to a multi-year construction project, when production lead time will not permit export during the original validity period of the license, or for other similar circumstances. A continuing requirement to supply spare or replacement parts will not normally justify an extended validity period. Applicants may request an extended validity period by indicating the desired validity period in the additional information block of Form ITA–622P, and attaching justification and documentation to support the request. The approved expiration date will be indicated on the face of the license. For extensions of the validity period after the license has been issued, see § 372.12.

* * * * *

6. Section 372.11 is amended as follows:

a. Paragraph (e)(7) is revised as set forth below;

b. Paragraph (g)(2)(i) is removed;

c. Paragraphs (g)(2) (ii), (iii), and (iv) are redesignated as new paragraphs (g)(2) (i), (ii), and (iii);

d. Paragraph (g)(3) is amended by removing the words "or extension" from paragraphs (g)(3) (i), (ii), and (v), and (vi); and

e. Paragraph (h)(4) is redesignated as paragraph (h)(5) and the fourth sentence, which is enclosed in parentheses, is revised to read as set forth below; and

f. New paragraph (h)(4) is added to read as set forth below.

§ 372.11 Amending export licenses.

* * * * *

(e) * * *

(7) Extension of the validity of a 24-month license, but only as provided in § 372.12. See Part 373 for extension of special licenses and § 379.5(f)(2) for technical data licenses.

* * * * *

(h) * * *

(4) *Copy of Export License.* A copy of the license application (Form ITA–622P) or reexport request (Form ITA–699P), Export License (Form ITA–628), and any previous amendment requests related to the application shall be submitted with an amendment request.

(5) * * * (See § 372.12 for additional information on emergency processing of extension requests.) * * *

* * * * *

7. Section 372.12 is amended by revising the introductory text and paragraph (a) to read as set forth below, by removing paragraphs (b) and (c), and by redesignating paragraphs (d), (e), and (f) as new paragraphs (b), (c), and (d).

§ 372.12 Special provisions for an amendment to extend the validity period of a license.

A request to extend the validity period of an individual validated license for commodities generally will not be granted, but will be considered by the Office of Export Licensing in the circumstances described in § 372.9(d)(2) or when an unforeseen emergency situation prevents shipment within the 24-month validity of the license. The request must be made on Form ITA–685P in the same manner as any other amendment request. Licenses issued under the emergency clearance provisions of § 372.4(b) will not be extended.

(a) *Procedure for requesting an extension.* (See Parts 373, 377, and 379 for extension of licenses issued under those parts.)

(1) The amendment request must be submitted at least 30 days prior to expiration of the license;

(2) In the space entitled "Facts Necessitating Amendment," state the circumstances that provide the basis for the new validity period request. Attach supporting documentation and a detailed justification;

(3) The required length of extension and proposed new expiration date should be indicated on Form ITA–685P in the space entitled "Amend License to Read as Follows."

* * * * *

§ 373.7 [Amended]

6. Section 373.7 is amended by revising the reference in paragraph (m)(2)(i) from "(see paragraph (n)(1)(i) of this part)" to read "(see paragraph (m)(1)(i) of this section)".

7. Section 374.5 is amended as follows:

a. Paragraph (a) is amended by revising the reference in the second sentence to "twelfth month" to read "twenty-fourth month";

b. Paragraph (b) heading and introductory text are revised to read as set forth below; and

c. Paragraph (b)(2) is revised to read as follows:

§ 374.5 Validity period.

* * * * *

(b) *Extension of validity period.* The validity period of any reexport authorization for commodities generally will not be extended. A request for extension will be considered by the Office of Export Licensing in the circumstances described in § 372.9(d)(2) or when an unforeseen emergency situation prevents shipment within the 24-month validity of the license. The request should be submitted on Form ITA-685P. Request for and Notice of Amendment Action, or by letter, in accordance with the following: * * *

(2) *Letter request for extension.* If Form ITA-685P is not readily available, the foreign applicant may submit a request for the extension of the validity period of a previously approved reexport authorization in a letter, subject titled "Request for Extension of Reexport Authorization Validity Period," containing—

(i) The name and address of the foreign applicant;

(ii) The name and address of the new ultimate consignee;

(iii) The case number, the validation number, the date of the original reexport request, and a copy of the approved authorization;

(iv) The countries involved in the proposed reexport transaction; and

(v) Justification for the extension.

The documentation normally required to support certain reexport requests under the provisions of § 374.3(c) need not be resubmitted with a request for the extension of the validity period of a reexport authorization, provided the original documents are still valid and remain in the possession of the Office of Export Licensing.

8. Section 377.6 is amended by revising paragraph (g) to read as follows:

§ 377.6 Petroleum and petroleum products.

* * * * *

(g) *Validity period.* A license issued pursuant to this § 377.6 is valid for one year from the last day of the month during which it is issued.

* * * * *

9. Section 377.7 is amended by revising paragraph (i)(1) to read as follows:

§ 377.7 Unprocessed western red cedar.

* * * * *

(i) *Export licenses for western red cedar*—(1) A license issued pursuant to this § 377.7 is valid for one year from the last day of the month during which it is issued.

* * * * *

10. Section 379.5 is amended by revising paragraphs (d)(6) and (f) to read as follows:

§ 379.5 Validated license applications.

* * * * *

(d) * * *

(6) An explanation of the process, product, size, and output capacity of the plant or equipment, if applicable, or other description that delineates, defines, and limits the data to be transmitted (the "technical scope");

* * * * *

(f) *Validity period and extension*—(1) *Initial validity.* Validated licenses covering exports of technical data will generally be issued for a validity period of 24 months. Upon request, a validity period exceeding 24 months may be granted where the facts of the transaction warrant it and the Office of Export Licensing determines that such action would be consistent with the objectives of the applicable U.S. export control program. Justification for a validity period exceeding 24 months should be provided in accordance with the procedures set forth in § 372.9(d)(2) for requesting an extended validity period with a license application. The Office of Export Licensing will make the final decision on what validity beyond 24 months, if any, should be authorized in each case.

(2) *Extensions.* A request to extend the validity period of a technical data license shall be made on Form ITA-685P in accordance with the procedures set forth in § 372.12(a). The request shall include on Form ITA-685P, in the space entitled "Amend License to Read as Follows," whether the license has been previously extended and the date(s) and duration of such extension(s). The Office of Export Licensing will make the final decision on what extension beyond 24 months, if any, should be authorized in each case. (See § 379.8(c)(1) for validity period extensions for reexports of technical data.)

11. Section 379.7 is revised to read as follows:

§ 379.7 Amendments.

Requests for amendments shall be made in accordance with the provisions of § 372.11. Changes requiring amendment include any expansion or upgrade of the technical scope that was described in the letter of explanation, as approved or modified on the export license.

12. In § 379.8, the last sentence of paragraph (c)(1) is revised and a new sentence is added to the end of the paragraph to read as follows:

§ 379.8 Reexports of technical data and exports of the product manufactured abroad by use of U.S. technical data.

* * * * *

(c) * * *

(1) * * * Any request for extension of the validity period shall be requested in accordance with § 374.5(b), and shall specify the period for which additional validity is required. The Office of Export Licensing will make the final decision on what validity beyond 24 months, if any, should be authorized in each case.

* * * * *

13. New § 390.5 is added to read as follows:

§ 390.5 General order extending outstanding individual validated licenses for commodities.

Effective November 5, 1986 all outstanding individual validated licenses that were initially issued for one-year validity periods, except for short supply licenses issued under 15 CFR Part 377, are extended for 12 months from their original expiration dates. Also effective November 5, 1986 all reexport authorizations that were initially granted with one-year validity periods, except for reexport authorizations under 15 CFR Part 377, are extended for 12 months from their original expiration dates.

Dated: October 31, 1986.

Vincent F. DeCain,

Deputy Assistant Secretary for Export Administration.

[FR Doc. 86-25030 Filed 11-4-86; 8:45 am]

BILLING CODE 3510-DT-M

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15 CFR Part 399

[Docket No. 60978-6178]

Removal of Validated License Controls on Mercury-Cadmium-Telluride (HgCdTe) Detectors.

AGENCY: Export Administration, International Trade Administration, Commerce.

ACTION: Final rule.

SUMMARY: Export Administration maintains the Commodity Control List

(CCL), which identifies those items subject to Department of Commerce export controls.

This rule amends the validated export license controls on certain photosensitive components described in entry 1548A of the CCL according to a finding of foreign availability under Section 5(f) of the Export Administration Act of 1979, as amended. Single element, encapsulated mercury-cadmium-telluride (HdCdTe) uncooled (295 °K room temperature operation) photoelectro-magnetic (PEM) or photoconductive (PC) mode photo detectors with a peak sensitivity at a wave length shorter than 11,000 nanometers now require a validated license for export only to destinations in Country Groups Q, S, W, Y, and Z, the People's Republic of China, and Afghanistan.

Notice of the foreign availability determination on this equipment has been published previously (51 FR 37469, October 22, 1986).

EFFECTIVE DATE: This rule is effective November 5, 1986.

FOR FURTHER INFORMATION CONTACT: Larry Hall, Office of Foreign Availability, Department of Commerce, Washington, DC 20230, Telephone: (202) 377–3564.

SUPPLEMENTARY INFORMATION:

Rulemaking Requirements

1. Because this rule concerns a foreign and military affairs function of the United States, it is not a rule or regulation within the meaning of Section 1(a) of Executive Order 12291, and it is not subject to the requirements of that Order. Accordingly, no preliminary or final Regulatory Impact Analysis has been or will be prepared.

2. Section 13(a) of the Export Administration Act of 1979, as amended (50 U.S.C. App. 2412(a)), exempts this rule from all requirements of section 553 of the Administrative Procedure Act (APA) (5 U.S.C. Section 553), including those requiring publication of a notice of proposed rulemaking, an opportunity for public comment, and a delay in effective date. This rule is also exempt from these APA requirements because it involves a foreign and military affairs function of the United States. Further, no other law requires that a notice of proposed rulemaking and opportunity for public comment be given for this rule. Accordingly, it is being issued in final form. However, as with other Department of Commerce rules, comments from the public are always welcome. Comments should be submitted to Vincent Greenwald, Office of Technology and Policy Analysis, Export Administration, U.S. Department of Commerce, P.O. Box 273, Washington, DC 20044.

3. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule by section 553 of the Administrative Procedure Act (5 U.S.C. 553), or by any other law, under sections 603(a) and 604(a) of the Regulatory Flexibility Act (5 U.S.C. 603(a) and 604(a)) no initial or final Regulatory Flexibility Analysis has to be or will be prepared.

4. This rule mentions a collection of information subject to the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). This collection has been approved by the Office of Management and Budget under control number 0625–0001.

List of Subjects in 15 CFR Part 399

Exports, Reporting and recordkeeping requirements.

Accordingly, the Export Administration Regulations (15 CFR Parts 368–399) are amended as follows:

1. The authority citation for Part 399 continues to read as follows:

Authority: Pub. L. 96–72, 93 Stat. 503, 50 U.S.C. App. 2401 *et seq.*, as amended by Pub. L. 97–145 of December 29, 1981 and by Pub. L. 99–64 of July 12, 1985; E.O. 12525 of July 12, 1985 (50 FR 28757, July 16, 1985); Pub. L. 95–223, 50 U.S.C. 1701 *et seq.*; E.O. 12532 of September 9, 1985 (50 FR 36861, September 10, 1985) as affected by notice of September 4, 1986 (51 FR 31925, September 8, 1986).

2. In Supplement No. 1 to § 399.1 (the Commodity Control List), Commodity Group 5 (Electronics and Precision Instruments), ECCN 1548A is amended by revising the *Validated License Required* paragraph to read "Country Group QSTVWYZ, except that single element, encapsulated mercury-cadmium-telluride (HgCdTe) uncooled (295 °K room temperature operation) photoelectro-magnetic (PEM) or photoconductive (PC) mode photo detectors with a peak sensitivity at a wavelength shorter than 11,000 nanometers described in paragraph (a) require a validated license only for Country Groups QSWYZ, the People's Republic of China, and Afghanistan.

Dated: October 29, 1986.

Dan Hoydysh,

Acting Director, Office of Technology and Policy Analysis.

[FR Doc. 86–25031 Filed 11–4–86; 8:45 am]

BILLING CODE 3510-DT-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 73

[Docket No. 85C–0532]

Confirmation of Effective Date for Iron Oxides, Chromium Oxide Greens, and Titanium Dioxide; Listing of Color Additives for Coloring Contact Lenses

Correction

In FR Doc. 86–21086 appearing on page 33032 in the issue of Thursday, September 18, 1986, make the following correction:

In the first column, in the last paragraph, fourth line, "276" should read "376".

BILLING CODE 1505-01-M

21 CFR Part 172

[Docket No. 84F–0408]

Food Additives Permitted for Direct Addition to Food for Human Consumption; Sucrose Fatty Acid Esters

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of sucrose fatty acid esters prepared with the solvents dimethyl sulfoxide and isobutyl alcohol. This action responds to a petition filed by Mitsubishi Chemical Industries, Ltd.

DATES: Effective November 5, 1986; objections by December 5, 1986. The Director of the Office of the Federal Register approves the incorporation by reference of certain publications in 21 CFR 172.859 effective November 5, 1986.

ADDRESS: Written objections to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Blondell Anderson, Center for Food Safety and Applied Nutrition (HFF–334), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–426–5487.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of January 4, 1985 (50 FR 551), FDA announced that a petition (FAP 5A3839) had been filed by Mitsubishi Chemical Industries, Ltd., 5–2, Marunouchi 2-chome, Chiyoda-ku, Tokyo, Japan,

proposing that 21 CFR 172.859 of the food additive regulations be amended to provide for the safe use of dimethyl sulfoxide and isobutyl alcohol as solvents in the preparation of sucrose fatty acid esters.

FDA has evaluated the data in the petition and other relevant material. The agency concludes that the proposed food additive use is safe, and that the regulations should be amended as set forth below.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition (address above) by appointment with the information contact person listed above. As provided in 21 CFR 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

The agency has carefully considered the potential environmental effects of this action and has concluded that the action will not have a significant impact on the human environment and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday. FDA's regulations implementing the National Environmental Policy Act (21 CFR Part 25) have been replaced by a rule published in the **Federal Register** of April 26, 1985 (50 FR 16636, effective July 25, 1985). Under the new rule, an action of this type would require an abbreviated environmental assessment under 21 CFR 25.31a(b)(5).

Any person who will be adversely affected by this regulation may at any time on or before December 5, 1986 file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 172

Food additives, Incorporation by reference.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, Part 172 is amended as follows:

PART 172—FOOD ADDITIVES PERMITTED FOR DIRECT ADDITION TO FOOD FOR HUMAN CONSUMPTION

1. The authority citation for 21 CFR Part 172 continues to read as follows:

Authority: Secs. 201(s), 409, 72 Stat. 1784–1788 as amended (21 U.S.C. 321(s), 348); 21 CFR 5.10 and 5.61.

2. In § 172.859 by revising the last sentence in paragraph (a) and by adding new paragraph (b)(10) and (11) to read as follows:

§ 172.859 Sucrose fatty acid esters.

* * * * *

(a) * * * Ethyl acetate or methyl ethyl ketone or dimethyl sulfoxide and isobutyl alcohol (2-methyl-1-propanol) may be used in the preparation of sucrose fatty acid esters.

(b) * * *

(10) The total dimethyl sulfoxide content is not more than 2 parts per million as determined by a method entitled "Determination of Dimethyl Sulfoxide," which is incorporated by reference. Copies are available from the Division of Food and Color Additives, Center for Food Safety and Applied Nutrition (HFF–330), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, or available for inspection at the Office of the Federal Register 1100 L St. NW., Washington, DC 20408.

(11) The total isobutyl alcohol (2-methyl-1-propanol) content is not more than 10 parts per million as determined by a method entitled "Determination of Isobutyl Alcohol," which is incorporated by reference. Copies are available from the Division of Food and Color Additives, Center for Food Safety and Applied Nutrition (HFF–330), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, or available for inspection at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408.

* * * * *

Dated: October 27, 1986.

Sanford A. Miller,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 86–24953 Filed 11–4–86; 8:45 am]

BILLING CODE 4160–01–M

UNITED STATES INFORMATION AGENCY

22 CFR Parts 526 and 527

Freedom of Information Act Regulations for the National Endowment for Democracy

AGENCY: United States Information Agency.

ACTION: Final rule.

SUMMARY: These regulations comply with Pub. L. 99–93 of August 16, 1985, amending the National Endowment for Democracy Act (22 U.S.C. 4411, *et seq.*) which requires the Director of the United States Information Agency to publish information on the application of the Freedom of Information Act (5 U.S.C. 552) (hereinafter "FOIA") to the National Endowment for Democracy (hereinafter "NED"). More specifically, Pub. L. 99–93 requires that NED make available to the Director of the United States Information Agency (hereinafter "USIA") such records and information as necessary to comply with the provisions of FOIA, and that the Director shall cause such records and information to be published in the **Federal Register.**

EFFECTIVE DATE: December 5, 1986.

FOR FURTHER INFORMATION CONTACT: John A. Lindburg, Office of the General Counsel, United States Information Agency, Room 700, 301 Fourth Street SW., Washington, DC 20547 (202) 485–7976.

SUPPLEMENTARY INFORMATION:

Background

NED's proposed FOIA regulations were published by USIA in the **Federal Register** on August 29, 1986, subject to a thirty-day public comment period. No comments were received by USIA, and the only change made to NED's regulations concerns the Endowment's Procedures Manual [see Part 527(4)(h)] which was under revision during the comment period. The revised Manual was approved by the NED Board on September 12, 1986.

Under the National Endowment for Democracy's most recent authorizing

legislation (Pub. L. 99–93), NED is required to comply with the provisions of the Freedom of Information Act. *See* 22 U.S.C. 4415(a). The regulations governing NED's compliance with FOIA were drafted to ensure that requesters seeking access to NED records receive prompt responses and have recourse to denials through a series of procedures.

The law also establishes a mechanism of review by the Director of USIA in the event of final determinations by NED not to comply with a FOIA request for its records. *See* 22 U.S.C. 4415(c). In such instances, NED is required to submit to the Director of USIA a report of its reasons for noncompliance. *See* 22 U.S.C. 4415(c)(1). If the Director approves NED's determination, USIA then assumes full responsibility, including financial responsibility, for defending NED in judicial review of its determination. *See* 22 U.S.C. 4415(c)(2). If the Director disapproves NED's determination, NED must comply with the request. *See* 22 U.S.C. 4415(c)(3).

The regulations fulfill the publication requirements of 5 U.S.C. 552(a)(1) for NED's and USIA's compliance with FOIA. The regulations largely follow USIA's existing regulations implementing FOIA, since USIA regulations have provided an effective framework for compliance. To the extent that the regulations differ from USIA's existing regulations, they do so to reflect the structure and organization of NED and the additional review by the Director of USIA of NED determinations not to comply with requests for records. The significant differences between the sets of regulations are discussed below.

Section 526(a). Requesters are premitted to make their initial requests for records and appeals of denials thereof to either NED or USIA, consistent with the legislative intent expressed by the Committee of Conference. *See* H.R. Rep. No. 99–240, 99th Cong., 1st Sess. 79 (1985). Requesters are encouraged, however, to make their requests directly to NED to expedite their handling. For the same reason, USIA is required to forward any request it receives to NED within 2 working days of receipt by USIA. Requests will not be deemed to have been received for purposes of the time period set forth in 5 U.S.C. 552(a)(6)(A)(i) until actually received by NED.

Section 526(b). The regulations provide a 30-day period for appeal of an initial adverse NED determination, which period runs from the receipt by the requester of the notification of denial. This is the same as the appeal period contained in the existing USIA regulations. Thus, NED's initial determination becomes its final determination, *inter alia,* upon expiration of the appeal period. To allow for full consideration within NED before review by the Director of USIA, only final determinations by NED are review by the Director.

At the same time, the regulations allow a requester to accelerate the time within which NED's initial determination becomes final and therefore eligible for review by the Director of USIA (and by the courts) by notifying NED of his election to forego appeal by the President of NED or his designee. This will allow more expeditious resort to review by USIA if the requester wishes.

The regulations require NED to submit a report to the Director of USIA within five working days of NED's determination to deny a request for records. This period is designed to provide the requester with expeditious review and NED with sufficient opportunity to prepare the report that will serve as the basis of approval or disapproval by the Director.

Because review by the Director may resolve any dispute over access to NED records in favor of the requestor, the proposed regulations encourage, but do not require, the requester to await the determination on review by the Director before seeking judicial review of NED's final determination. The minimal time period allowed for USIA review should not prejudice requesters.

USIA has determined that this is not a major rule for purpose of Executive Order 12291. Therefore, no Regulatory Impact Analysis is required. In addition, because USIA neither prescribes nor exercises any discretion over NED's grant application procedures, Paperwork Reduction Act requirements governing information collection are inapplicable.

List of Subjects

22 CFR Part 526

Freedom of Information.

22 CFR Part 527

Organization and functions.

Dated: October 14, 1986.

C. Normand Poirier,

Acting General Counsel, United States Information Agency.

Accordingly, for the reasons set out in the preamble, 22 CFR Chapter V is amended as set forth below:

1. New Part 526 is added to read as follows:

PART 526—AVAILABILITY OF THE RECORDS OF THE NATIONAL ENDOWMENT FOR DEMOCRACY

Sec.

Authority: Title II, Sec. 210, Pub. L. 99–93, 99 Stat. 431, 22 U.S.C. 4415.

§ 526.1 Introduction.

These regulations amend the Code of Federal Regulations to conform with Pub. L. 99–93. Pub. L. 99–93 amended the National Endowment for Democracy Act (22 U.S.C. 4411, et. seq.) to require the National Endowment for Democracy (hereinafter "NED") to comply fully with the provisions of the Freedom of Information Act (5 U.S.C. 552) (hereinafter "FOIA"), notwithstanding that NED is not an agency or establishment of the United States Government. NED will make information about its operation, organization, procedures and records available to the public in accordance with the provisions of FOIA.

§ 526.2 Location of description of organization and substantive rules of general applicability adopted as authorized by law, and statements of general applicability formulated and adopted by NED.

See 22 CFR Part 527 for a description of the organization of NED and substantive rules of general applicability formulated and adopted by NED.

§ 526.3 Places at which forms and instructions for use by the public may be obtained.

(a) All forms and instructions pertaining to procedures under FOIA may be obtained from the FOIA Officer of the National Endowment for Democracy, 1156 15th Street NW., Suite 304, Washington, DC 20005.

(b) Grant guidelines may be obtained from the Program Office of NED to the address shown in paragraph (a) of this section.

(c) General information may be obtained from the Public Affairs Office

of NED at the address shown in paragraph (a) of this section.

§ 526.4 Availability of final opinions, orders, policies, interpretations, manuals and instructions.

NED is not an adjudicatory organization and therefore does not issue final opinions and orders made in the adjudication of cases. NED will, however, in accordance with the rules in this section and 526.7, make available for public inspection and copying those statements of policy and interpretation that have been adopted by NED and are not published in the **Federal Register**, and administrative staff manuals and instructions to staff that affect any member of the public.

(a) *Deletion to protect privacy.* To the extent required to prevent a clearly unwarranted invasion of personal privacy, NED may delete identifying details when it makes available or publishes a statement of policy, interpretation, or staff manual or instruction. Whenever NED finds any such deletion necessary, the responsible officer or employee must fully explain the justification therefor in writing.

(b) *Current index.* NED will maintain and make available on its premises for public inspection and copying a current index providing identifying information for the public as to any matter issued, adopted or promulgated after July 4, 1967, and required by this section to be made available or published. NED will provide copies on request at a cost of $0.15 per page.

§ 526.5 Availability of NED records

Except with respect to the records made available under 526.4, NED will, upon request that reasonably describes records in accordance with the requirements of this section, and subject to the exemptions listed in 5 U.S.C. 552(b), make such records promptly available to any person.

(a) *Requests for records—How made and addressed.* (1) Requesters seeking access to NED records under FOIA should direct all requests in writing to: Freedom of Information Act Officer, National Endowment for Democracy, 1156 15th Street, NW., Suite 304, Washington, DC 20005, (202) 293–9072. Although requesters are encouraged to make their requests for access to NED records directly to NED, requests for access to NED records also may be submitted to USIA's Office of General Counsel and Congressional Liaison at the following address: Freedom of Information/Privacy Acts Coordinator, U.S. Information Agency, Room M–04, 301 Fourth Street SW., Washington, DC 20547.

(2) Appeals of denials of initial requests must be addressed to NED or USIA in the same manner, with the addition of the word "APPEAL" preceding the address on the envelope. Requests or appeals addressed directly to USIA's Office of the General Counsel and Congressional Liaison will not be deemed to have been received by NED for purposes of the time period set forth in 5 U.S.C. 552(a)(6)(A)(i) until actually received by NED. USIA shall forward any request or appeal received by it to NED within 2 working days from the actual day of receipt by USIA.

(3) The request letter should contain all available data concerning the desired records, including a description of the material, dates, titles, authors, and other information that may help identify the records. The first paragraph of a request letter should state whether it is an initial request or an appeal.

(b) *Administrative time limits.* (1) Within 10 working days after NED's receipt of any request for access to NED records in compliance with paragraph (a) of this section, NED shall make an initial determination whether to provide the requested information and NED shall notify the requester in writing of its initial determination. In the event of an adverse determination, notification shall include the reasons for the adverse determination, the officials responsible for such determination, the right of the requester to appeal within NED, and that the final determination by NED to deny a request for records in whole or in part shall be submitted to the Director of USIA for review. NED shall also provide USIA a copy of its response as soon as practicable after it responds to the requester.

(2) When a request for records has been denied in whole or in part, the requester may, within 30 days of the date of receipt by the requester of the adverse determination from NED, appeal the denial to the President of NED or his designee, who will make a determination whether to grant or deny such appeal within 20 working days of receipt thereof. All appeals should be addressed in compliance with paragraph (a) of this section. If on appeal, the denial of the request for records is upheld, in whole or in part, NED shall notify the requester in writing of such determination, the reasons therefor, the officials responsible for such determination, the right of the requester to judicial review, and that the final determination by NED whether to deny a request for records in whole or in part shall be submitted to the Director of USIA for review.

(3) If the requester elects not to appeal to the President of NED or his designee within the appeal period specified above, NED's initial determination will become the final NED determination upon expiration of said appeal period or receipt by NED of notice from the requester that he does not elect to appeal, whichever is earlier. If the requester chooses to appeal NED's initial determination within NED, the decision on appeal will become NED's final determination.

(4)(i) Once NED's determination to deny a request in whole or in part becomes final, NED shall submit a report to the Director of USIA explaining the reasons for such denial no later than 5 working days thereafter.

(ii) The Director of USIA shall review NED's final determination within 20 working days. If the Director of USIA or his designee approves NED's denial in whole or in part, USIA shall inform the requester and NED in writing of such determination, the reasons therefor, the officials responsible for such determination, and the right of the requester to judicial review of NED's determination. In the event of such a determination, USIA shall assume full responsibility, including financial responsibility, for defending NED in any litigation relating to such request.

(iii) If the Director of USIA or his designee disapproves NED's denial in whole or in part, USIA shall promptly notify NED and thereafter NED shall promptly comply with the request for the pertinent records.

(iv) Because review by the Director of USIA may resolve any dispute over access to NED records in the requester's favor, the requester is encouraged (but not required) to wait for the determination on review by the Director of USIA before seeking judicial review of NED's final determination.

(5) In unusual circumstances as defined in 5 U.S.C. 552(a)(6)(B), the time limit provisions noted in paragraphs (b)(1) and (b)(2) of this section may be extended by written notice to the requester setting forth the reasons for such extension and the date on which a determination can be expected. Such extensions of the time limits may not exceed 10 working days in the aggregate.

(6) Any person making a request for records pursuant to 526.5 may consider administrative remedies exhausted if NED fails to comply within the applicable time limit provisions of this section. When no determination can be dispatched within the applicable time limits set forth in this section, NED shall nevertheless continue to process the request. On the expiration of the time limit, NED shall inform the requester of

the reason for the delay, of the date on which a determination may be expected to be dispatched, and of the requester's right to treat the delay as a denial and of the requester's right to appeal. NED may ask the requester to forego appeal until a determination is made. A copy of any such notice of delay will be sent to the Director of USIA or to his designee no later than 2 working days after it has been sent to the requester. A court may retain jurisdiction and allow NED additional time to complete its review of the records, if it can be determined that exceptional circumstances exist and that NED is exercising due diligence in responding to the request.

(c) *Schedule of standard fees.* The following specific fees shall apply with respect to services rendered to the public pursuant to the FOIA:

(1) Making photocopies—$0.15 per page. No fee will be charged for a request totalling 10 pages or fewer.

(2) Searching for records—$8.00 per hour for clerical personnel; $15.00 per hour for supervisory personnel. No fees will be charged for searches of one hour or less.

(3) Duplication of architectural photographs and drawings—$2.00.

(4) For signed statement of nonavailability of record—no fee.

(5) Fees must be paid in full prior to issuance of requested copies.

(6) Where it is anticipated that the fees chargeable under this section will amount to more than $25.00, and the requester has not indicated in advance a willingness to pay fees as high as are anticipated, the requester shall be promptly notified of the amount of the anticipated fee or such portion thereof as can readily be estimated. In appropriate cases, an advance deposit may be required. The notice or request for an advance deposit shall extend an offer to the requester to confer with knowledgeable NED personnel in an attempt to reformulate the request in a manner which will reduce the fees and meet the needs of the requester. Dispatch of such a notice of request shall suspend the running of the period for response by NED until a reply is received from the requester.

(7) Search costs are due and payable even if the record that was requested cannot be located after all reasonable efforts or if NED determines that a record that is exempt from disclosure under this part is to be withheld.

(8) Remittances shall be in the form of a personal check or bank draft drawn on any bank in the United States, a postal money order, or cash. Remittances shall be made payable to the order of: National Endowment for Democracy. NED will assume no responsibility for cash lost in the mail.

(9) A receipt for fees paid will be given only upon request. Refund of fees paid for services actually rendered will not be made.

(10) The President of NED or his designee may waive all or part of any fee provided for in this section when the President of NED or his designee deems such waiver to be in the public interest because furnishing the information can be considered as primarily benefiting the general public.

(d) *Determination of Non-Standard Fees.* When no specific fee has been established for a service (for example, when the search involves computer time, or special travel, transportation, or communication costs), the President of NED or his designee is authorized to determine the direct costs of the service and include such costs in the fees chargeable under this section.

§ 526.6 Exemptions.

NED reserves the right to withhold records and information that are exempt from disclosure under FOIA. *See* 5 U.S.C. 552(b).

§ 526.7 Limitation of exemptions.

FOIA does not authorize withholding of information or limit the availability of NED records to the public except as specifically stated in this part. Nor is authority granted to withhold information from Congress.

§ 526.8 Reports.

On or before March 1 of each calendar year, NED shall submit a reporting covering the preceding calendar year to the Speaker of the House of Representatives and the President of the Senate for referral to the appropriate committees of the Congress. The report shall include those items specified at 5 U.S.C. 552(d).

2. New Part 527 is added to read as follows:

PART 527—ORGANIZATION OF THE NATIONAL ENDOWMENT FOR DEMOCRACY

Sec.

Authority: 22 U.S.C. 4411 *et seq.;* Title II, Sec. 210, Pub. L. 99-93, 99 Stat. 431, 22 U.S.C. 4415.

§ 527.1 Introduction.

(a) The National Endowment for Democracy (hereinafter "NED") was created in 1983 to strengthen democratic values and institutions around the world through nongovernmental efforts. Incorporated in the District of Columbia and governed by a bipartisan Board of Directors, NED is tax-exempt, nonprofit, private corporation as defined in section 501(c)(3) of the Internal Revenue Code. Through its worldwide grant program, NED seeks to enlist the energies and talents of private citizens and groups to work with partners abroad who wish to build for themselves a democratic future.

(b) Since its establishment in 1983, NED has received an annual appropriation approved by the United States Congress as part of the United States Information Agency budget. Appropriations for NED are authorized in the National Endowment for Democracy Act (the "Act"), 22 U.S.C. 4411 *et seq.*

(c) The activities supported by NED are guided by the six purposes set forth in NED's Articles of Incorporation and the National Endowment for Democracy Act. These six purposes are:

(1) To encourage free and democratic institutions throughout the world through private-sector initiatives, including activities which promote the individual rights and freedoms (including internationally recognized human rights) which are essential to the functioning of democratic institutions;

(2) To facilitate exchanges between U.S. private sector groups (especially the two major American political parties, labor and business) and democratic groups abroad;

(3) To promote U.S. nongovernmental participation (especially through the two major American political parties, labor, and business) in democratic training programs and democratic institution-building abroad;

(4) To strengthen democratic electoral processes abroad through timely measures in cooperation with indigenous democratic forces;

(5) To support the participation of the two major American political parties, labor, business, and other U.S. private-sector groups in fostering cooperation with those abroad dedicated to the cultural values, institutions, and organizations of democratic pluralism; and

(6) To encourage the establishment and growth of democratic development in a manner consistent both with the broad concerns of United States national interests and with the specific requirements of the democratic groups in other countries which are aided by NED-supported programs.

§ 527.2 Board of Directors.

(a) NED is governed by a bipartisan Board of Directors of not fewer than thirteen and not more than seventeen members reflecting the diversity of American society. The officers of the corporation are Chairman and Vice Chairman of the Board, who shall be members of the Board, a President, Secretary and Treasurer, and such other officers as the Board of Directors may from time to time appoint. Meetings of the Board of Directors are held at times determined by the Board, but in no event fewer than four times each year. A current list of members of the Board of Directors and a schedule of upcoming meetings is available from NED's office at 1156 15th Street, NW., Suite 304, Washington, DC 20005.

(b) All major policy and funding decisions are made by the Board of Directors. The primary statement of NED's operating philosophy, general principles and priorities is contained in the National Endowment for Democracy's *Statement of Principles and Objectives,* adopted by the Board of Directors in December 1984. Copies of this statement as well as other general information concerning the organization are available from NED on request.

(c) As a grantmaking organization, NED does not carry out programs directly. The procedures for approval of grants are stated in NED's bylaws: "[a]ll grants made by the corporation shall be by a two-thirds vote of those voting at a meeting at which a quorum is present, provided, however, that no grant may be approved by less than a majority of the Board of Directors" (Article VI, Section 5). In addition, "[a]ny Board member who is an officer or director of an organization seeking to receive grants from the Corporation must abstain from consideration of and any vote on such grant" (Article VI, Section 6). Copies of the bylaws are available from NED's offices.

§ 527.3 Management.

(a) NED's operations and staff are managed by a President selected by the Board of Directors. The President is the chief executive officer of the corporation and manages the business of the corporation under the policy direction of the Board of Directors. The President directs a staff whose functions are divided among the Office of the President, a Program Section and a Finance Office.

(b) The Office of the President provides policy direction and is responsible for day-to-day management of the organization, including personnel management, liaison with the Board of Directors and preparation of meetings of the Board and Board committees. The President's office also provides information concerning NED's activities to the press and public. The Program Section, under the direction of the Director of Program, is responsible for the review and preparation of proposals submitted to the Endowment and for the monitoring and evaluation of all programs funded by NED.

(c) The Finance Office, under the direction of the Comptroller, is responsible, with the President and the Board of Directors, for financial management of NED's affairs, including both administrative financial management and grant management. The Director of Program and the Comptroller report to the NED President.

§ 527.4 Description of functions and procedures.

(a) In accordance with the *Statement of Principles and Objectives,* NED is currently developing and funding programs in five substantive areas:

(1) *Pluralism.* NED encourages the development of strong, independent private-sector organizations, especially trade unions and business associations. It also supports cooperatives, civic and women's organizations, and youth groups, among other organizations. Programs in the areas of labor and business are carried out, respectively, through the Free Trade Union Institute and the Center for International Private Enterprise.

(2) *Democratic governance and political processes.* NED seeks to promote strong, stable political parties committed to the democratic process. It also supports programs in election administration and law, as well as programs that promote dialogue among different sectors of society and advance democratic solutions to national problems.

(3) *Education, culture and communications.* NED funds programs that nourish a strong democratic civic culture, including support for publications and other communications media and training programs for journalists; the production and dissemination of books and other materials to strengthen popular understanding and intellectual advocacy of democracy; and programs of democratic education.

(4) *Research.* A modest portion of NED's resources is reserved for research, including studies of particular regions or countries where NED has a special interest, and evaluations of previous or existing efforts to promote democracy.

(5) *International cooperation.* NED seeks to encourage regional and international cooperation in promoting democracy, including programs that strengthen cohesion among democracies and enhance coordination among democratic forces.

(b) As a grantmaking organization, NED has certain responsibilities that govern its relationship with all potential and actual grantees. Briefly, these are:

(1) *Setting program priorities* within the framework of the purposes outlined in NED's articles of incorporation and contained in the legislation, and guided by the general policy Statement of the Board of Directors;

(2) *Reviewing and vetting proposals,* guided by the general guidelines and selection criteria adopted by the NED Board;

(3) *Coordinating among all grantees* to avoid duplication and to assure maximum program effectiveness;

(4) *Negotiating a grant agreement* which ensures a high standard of accountability on the part of each grantee;

(5) *Financial and programmatic monitoring* following the approval and negotiation of a grant, and ongoing and/or follow-up evaluation of programs prior to any subsequent funding of either a particular grantee or a specific program. Grantees will also be expected to monitor projects, to provide regular reports to NED on the progress of programs, and to inform NED promptly of any significant problems that could affect the successful implementation of the project. NED grantees will also conduct their own evaluations of programs.

(6) As a recipient of congressionally appropriated funds, NED has a special responsibility to

(i) Operate openly,

(ii) Provide relevant information on programs and operations to the public, and

(iii) Ensure that funds are spent wisely, efficiently, and in accordance with all relevant regulations.

(c) Institutes representing business, labor, and the major political parties carry out programs which are central to NED's purposes. As a result of their unique relationship to NED, institute programs are an integral part of NED's priorities and the institutes themselves are "core" grantees. As such, the institutes, while subject to all the normal procedures governing NED's relationships with grantees, will be treated differently in the following respects:

(1) The institutes will have the mandate to carry out programs funded by NED in their respective sectors of business, labor and political parties.

(2) As an integral part of the process of budgeting and setting program priorities, the NED Board will target a certain amount of its annual resources for institute programs in their respective fields of activity.

(3) Unlike its practice for the majority of its grantees, NED will fund significant administrative costs for each of the core grantees.

(4) Institute staff will assume responsibility for program development and preparation of proposals for the Board in each field of activity for which it has a special mandate.

(5) NED will expect its core grantees to perform their monitoring/evaluation function described in programmatic monitoring under *Financial and programmatic monitoring* above in a manner that will minimize the need to devote NED resources for these purposes. (Individual copies of the Grants Policy are available from the NED office.)

(6) As stated above, in awarding grants the Board is guided by established grant selection critieria. In addition to evaluating how a program fits within NED's overall priorities, the Board considers factors such as the urgency of a program, its relevance to specific needs and conditions in a particular country, and the democratic commitment and experience of the applicant. NED is especially interested in proposals that originate with indigenous democratic groups. It is also interested in nonpartisan programs seeking to strengthen democratic values among all sectors of the democratic political spectrum.

(d) *Selection criteria.* In determining the relative merit of a particular proposal NED considers whether the grant application:

(1) Proposes a program that will make a concrete contribution to assisting foreign individuals or groups who are working for democratic ends and who need NED's assistance.

(2) Proposes a program, project or activity which is consistent with current NED program priorities and contributes to overall program balance and effectiveness.

(3) Proposes an activity that meets an especially urgent need.

(4) Does not overlap with what others are doing well.

(5) Proposes a program that will encourage an intellectual climate which is favorable to the growth of democratic institutions.

(6) Proposes a program that is not only culturally or intellectually appealing, but will affect the education and the awareness of minorities and/or the less privileged members of a society.

(7) Originates from an organization within a particular country representing the group whose needs are to be addressed.

(8) Appears to be well thought out, avoiding imprudent activities and possibilities for negative repercussions.

(9) Takes into consideration not only what objectively could be significant to a certain society, but how the cultural traditions and values of that society will react to the project.

(10) Incorporates an analysis of the problem of democracy in the area in question and the method by which the proposed program will have a constructive impact on the problem.

(11) Proposes a program that will enhance our understanding of what really helps in aiding democracy.

(12) Creatively enlists supports for foreign democratic organizations.

(13) Encourages democratic solutions and peaceful resolution of conflict in situations otherwise fraught with violence.

(14) Proposes a program, project or activity that is clearly relevant to NED program objectives and not better funded by other government or private organizations. (Proposing organizations will be be referred to other funding organizations where substantial overlap exists.)

(15) Proposes a program or strategy that is appropriate to the circumstances in the country concerned.

(16) Proposes a program that can be expected to have a multiplier effect, hence having an impact broader than that of the specific project itself; or establishes a model that could be readily replicated in other countries or institutions.

(17) Proposes appropriate, qualified staff who have a demonstrated ability to administer programs capably so as to accomplish stated goals and objectives.

(18) Proposes an appropriate ratio of administrative to program funds.

(19) Is responsive to NED suggestions with regard to program revisions.

(20) Proposes a realistic budget that is consistent with NED perceptions of project value and is performed within a stated and realistic time frame; and

(21) Proposes a program that has, as one of its principal aspects, a major impact on the role of women and/or minorities.

(e) The following guidelines also apply to all projects funded by NED.

(1) The proposing organization must be able to show that it is a responsible, credible organization or group that has a serious and demonstrable commitment to democratic values. (Various factors may be considered in this regard: recognized democratic orientation; established professional reputation; proven ability to perform; existence of organization charter, board of directors, regular audits, etc.);

(2) The proposing organization must be willing to comply with all provisions of the National Endowment for Democracy Act as well as all provisions of current and subsequent agreements between the USIA and NED;

(3) The proposing organization must agree not to use grant funds for the purpose of educating, training, or informing United States audiences of any U.S. political party's policy or practice, or candidate for office. (This condition does not exclude making grants or expenditures for the purpose of educating, training or informing audiences of other countries on the institutions and values of democracy that may incidentally educate, train, or inform American participants);

(4) The proposing organization must agree that no NED funds will be used for lobbying or propaganda that is directed at influencing public policy decisions of the government of the United States or of any state or locality thereof;

(5) The proposing organization must agree that there shall be no expenditure of NED funds for the purpose of supporting physical violence by individuals, groups or governments;

(6) The proposing organization may not employ any person engaged in intelligence activity on behalf of the United States government or any other government;

(7) NED will not normally reimburse grantees for expenses incurred prior to the signing of a grant agreement with NED;

(8) Each grant made by NED will be an independent action implying no future commitment on NED's part to a project or program;

(9) NED may, from time to time, fund feasibility studies. Applications for grants in this category should include, but not be limited to, the following: Scope, method and objective of the study; Calendar; Proposed administration of the study; and Detailed budget. The funding of a feasibility study by NED does not imply support for any project growing out of the study. It does, however, imply interest by NED in the area under study and a willingness to entertain a project proposal growing out of the study; and

(10) The proposing organization may not use NED funds to finance the campaigns of candidates for public office.

(f) All proposals received by NED are reviewed by the staff in order to determine their congruence with NED's

purposes as stated in the organization's Articles of Incorporation and the NED Act.

(g) Grant applications must contain the following information:

(1) A one-page summary of the proposed program;

(2) Organizational background and biographical information on staff and directors in the U.S. and abroad;

(3) A complete project description, including a statement of objectives, a project calendar, and a description of anticipated results;

(4) A statement describing how the project relates to NED's purposes;

(5) A description of the methods to be used to evaluate the project in relation to its objectives;

(6) A detailed budget, including an explanation of any counterpart support anticipated by the applicant, whether monetary or in-kind, domestic or foreign; and

(7) The names and addresses of all other funding organizations to which the proposal has been submitted or will be submitted.

(h) After an award determination has been made by the Board, NED enters into a grant agreement with the recipient. That agreement is made in accordance with NED policy, the terms of NED's grant agreement with USIA, and the terms of the Act, and the terms of NED's standard grant agreement as they apply to the specific project in question. The NED Board of Directors approved a revised Statement of General Procedures and Guidelines on September 12, 1986. The statement, outlined above, is available from the NED office.

(i) NED Staff welcomes preliminary letters of inquiry prior to submission of a formal proposal. Letters of inquiry and formal proposals should be submitted to: Director of Program, National Endowment for Democracy, 1156 15th Street, NW., Suite 304, Washington, DC 20005.

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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 31 and 602

[T.D. 8105]

Time and Manner of Making Quarterly Payments of the Railroad Unemployment Repayment Tax

AGENCY: Internal Revenue Service, Treasury.

ACTION: Temporary regulations.

SUMMARY: This document provides temporary regulations relating to the time and manner of making quarterly payments of the railroad unemployment repayment tax. The text of the temporary regulations set forth in this document also serves as the text of the proposed regulations cross-referenced in the notice of proposed rulemaking in the Proposed Rules section of this issue of the **Federal Register**. The temporary regulations reflect amendments to the Internal Revenue Code of 1954 with respect to quarterly payments of the railroad unemployment repayment tax made by section 231(b) of the Railroad Retirement Solvency Act of 1983, and provide guidance with respect to the time and manner of making those payments. (Amendments to the railroad unemployment repayment tax made by section 13301 of the Consolidated Omnibus Budget Reconciliation Act of 1985 do not affect the rules in this document.)

DATES: The regulations contained in this document are effective December 5, 1986, and apply to remuneration paid after June 30, 1986.

FOR FURTHER INFORMATION CONTACT: Gail H. Morse of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue., NW., Washington, DC 20224 (Attention: CC:LR:T) (202-566-3297, not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

Railroad workers, unlike most other occupational groups within the United States, are not covered by the Federal Unemployment Tax Act (FUTA). Instead, such workers receive unemployment benefits under the Railroad Unemployment Insurance Act (RUIA), a separate program administered by the Railroad Retirement Board.

Railroad employers pay over to the Railroad Unemployment Insurance Trust Fund contributions on the wages of their employees ranging from .5 percent to 8 percent (the specific percentage for a calendar year depends upon the financial condition of the railroad unemployment insurance account on the preceding September 30). See 20 CFR Part 345, relating to employers' contributions and contribution reports under the Railroad Uemployment Insurance Act. Unlike the FUTA system, there are no individual employer experience ratings under RUIA. Rather, one experience rating is determined for the railroad industry as a whole and imposed on all employers.

When contributions are insufficient to pay railroad unemployment benefits, the program can borrow from the railroad retirement account and repay when the Railroad Unemployment Insurance Trust Fund has more cash than is needed to pay benefits. For 21 of the last 26 years the unemployment fund has had to borrow from the retirement system. In recent years such borrowing has increased and has been coupled with non-repayment of the borrowed funds. A crisis arose in the railroad industry with respect to the railroad retirement and unemployment compensation systems in 1982—by 1983 a shortfall in the retirement fund was expected due to the decline in rail employment relative to the number of retired railroad employees (resulting in an excess of benefit payments over contributions to the system) and increased borrowing by the unemployment system coupled with non-repayment of the borrowed funds. The expected shortfall caused Congress to act to insure the solvency of both the railroad retirement and the railroad unemployment accounts. The Railroad Retirement Solvency Act of 1983 (the Act) (Pub. L. 98-76, 97 Stat. 426) was intended to improve the financial status of both the railroad retirement and unemployment systems and to increase the likelihood that both systems would be able to meet their continuing benefit obligations.

In addition to provisions with respect to the retirement system and administration of the railroad unemployment system, the Act sought to provide for the repayment of funds borrowed by the railroad unemployment system which had not been repaid. Chapter 23A, added to the Internal Revenue Code of 1954 by section 231 of the Act, provides for the imposition of the railroad unemployment repayment tax. This tax is an excise tax on railroad employers (a term defined in the Act by reference to section 1 of the Railroad Unemployment Insurance Act) with respect to having individuals in their employ as well as a tax on the income of employee representatives. The tax is effective for remuneration paid after June 30, 1986, and, as amended by section 13301 of the Consolidated Omnibus Budget Reconciliation Act of 1985 (Pub. L. 99-272, 100 Stat. 325), is equal to the applicable percentage of total rail wages for a particular taxable period. The applicable percentage, equal to the sum of the basic rate plus the surtax rate, will vary for each taxable period. The basic rate is applicable to taxable periods beginning after June 30, 1986, and before October 1, 1990. (This rate will terminate at an earlier date if

loans made to the railroad unemployment fund before October 1, 1985, are repaid before October 1, 1990). The surtax rate is effective for any taxable period beginning after September 30, 1986, where, as of September 30 of the preceding taxable year, there is an outstanding balance of transfers (or unpaid interest thereon), made after September 30, 1985, to the railroad unemployment insurance account under section 10(d) of the Railroad Unemployment Insurance Act.

Section 6157 provides that the payment of the railroad unemployment repayment tax will be on a quarterly basis in such manner and at such time as regulations prescribed by the Secretary may provide.

The temporary regulations found in this document provide the time and manner of making quarterly payments of the railroad unemployment repayment tax.

Explanation of Provisions

The temporary regulations reflect amendments to the Employment Tax Regulations under sections 6011, 6071, 6157, and 6302 of the Internal Revenue Code with respect to the requirement that there be quarterly payments of the railroad unemployment repayment tax.

Section 31.6011(a)–3AT (a) provides that rail employers shall make an annual return of the railroad unemployment repayment tax imposed by section 3321 on Form CT–1 (currently used for returns of railroad retirement tax). The Form CT–1 will thus provide for both the return of railroad retirement tax and the return of railroad unemployment repayment tax. The return is to be made for each taxable period (as defined in section 3322) in which the tax is imposed beginning with the period which commences on July 1, 1986. Section 31.6011(a)–3AT(b) provides that employee representatives (as generally defined in section 3323(d)) shall make a quarterly return of the railroad unemployment repayment tax on Form CT–2 (currently used for returns of railroad retirement tax). The Form CT–2 will thus provide for both the return of railroad retirement tax and the return of railroad unemployment repayment tax. The report is to be made for each calendar quarter of a taxable period in which the tax is imposed beginning with the period which commences on July 1, 1986.

Section 31.6071(a)–1T provides rules regarding the time for filing Forms CT–1 and CT–2. Section 31.6071(a)–1T(a) provides that Forms CT–1 and CT–2 are to be filed on or before the last day of the second calendar month following the period for which return is made (the same due date applicable to such returns filed in connection with railroad retirement taxes).

Section 31.6302(c)–2AT sets forth the rules governing the computation and payment by rail employers of the railroad unemployment repayment tax on a quarterly basis and provides for the deposit of the tax so computed with a Federal Reserve Bank or an authorized financial institution. The deposits are to be made by the last day of the first calendar month following the close of each of the first three calendar quarters of a taxable period. However, no deposit is required with respect to any of the first three calendar quarters if the tax computed for the quarter plus unpaid amounts for prior quarters during the taxable period is $100 or less. No deposit of the railroad unemployment repayment tax is required for the last calendar quarter in any taxable period unless the amount of such tax reportable on Form CT–1 exceeds by more than $100 the sum of the amounts deposited in the preceding three calendar quarters. In cases where the reportable railroad unemployment retirement tax exceeds by more than $100 the sum of the amounts deposited in the preceding three calendar quarters, § 31.6302(c)–2AT(b)(3) requires that the balance due be deposited with a Federal Reserve bank or with an authorized financial institution by the last day of the first calendar month following the taxable period for which the return is being filed. Where the railroad unemployment repayment tax reportable on Form CT–1 does not exceed by more than $100 the sum of the amounts deposited in the preceding three calendar quarters, that amount is to be remitted with Form CT–1. The preprinted Federal Tax Deposit coupon (Form 8109) is the form prescribed for making the deposits of the railroad unemployment repayment tax. Section 31.6302(c)–2AT(b)(1)(ii) requires that certain rail employers make their quarterly deposits of the railroad unemployment repayment tax by wire transfer to the Treasury. The wire payments will be credited to the rail employers' CT–1 account in the same manner as railroad retirement wire transfers. The wire deposit of the railroad unemployment repayment tax may not be made in the same wire deposit as any other tax.

Regulatory Flexibility Act; Executive Order 12291; Paperwork Reduction Act of 1980

No general notice of proposed rulemaking is required by 5 U.S.C. 553(b) for temporary regulations. Moreover, the Internal Revenue Service has concluded that the regulations herein will not have a significant impact on a substantial number of small entities. Accordingly, the Regulatory Flexibility Act does not apply and no Regulatory Flexibility Analysis is required for this rule. The Commissioner of Internal Revenue has determined that this temporary rule is not a major rule as defined in Executive Order 12291 and that a Regulatory Impact Analysis is therefore not required. The reporting requirements added by this document have been submitted to the Office of Management and Budget (OMB) in accordance with the requirements of the Paperwork Reduction Act of 1980. The reporting requirements have been approved by OMB.

Drafting Information

The principal author of these temporary regulations is Gail H. Morse of the Legislation and Regulations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and the Treasury Department participated in developing the regulations both on matters of substance and style.

List of Subjects

26 CFR Part 31

Employment taxes, Income taxes, Lotteries, Railroad retirement, Social security, Unemployment tax, Withholding.

26 CFR Part 602

Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR Part 31 and Part 602 are amended as follows:

PART 31—EMPLOYMENT TAXES AND COLLECTION OF INCOME TAX AT SOURCE

Paragraph 1. The authority for Part 31 is amended by adding the following citation:

Authority: 26 U.S.C. 7805. * * * Section 31.6011(a)–3AT is also issued under the authority of 26 U.S.C. 6011; § 31.6071(a)–1T is also issued under the authority of 26 U.S.C. 6071; § 31.6157–1T is also issued under 26 U.S.C. 6157(d); and § 31.6302(c)–2AT is also issued under 26 U.S.C. 6302.

Par. 2. A new § 31.6011(a)–3AT is added immediately following existing § 31.6011(a)–3 to read as follows:

§ 31.6011(a)–3AT Returns of the railroad unemployment repayment tax (temporary).

(a) *Requirement*—(1) *Employers.* Every rail employer (as defined in

section 3323(a) and section 1 of the Railroad Unemployment Insurance Act) shall make a return of the tax imposed by section 3321(a) (relating to the railroad unemployment repayment tax) for each taxable period (as defined in section 3322(a)) with respect to the total rail wages (as defined in section 3323(b)) paid by the rail employer during the taxable period. Form CT-1 is the form prescribed for use in making the return. One original and a duplicate of each return on Form CT-1 shall be filed with the director of the service center as designated in the instructions to Form CT-1. Rail wages taxable under section 3321(a) shall be reported in the return required under this section for the return period in which they are actually paid unless they were constructively paid in a prior return period, in which case such wages shall be reported only in the return for such prior period.

(2) *Employee representatives.* Each employee representative (as defined in section 3323(d)(2) and section 1 of the Railroad Unemployment Insurance Act) shall make a return of the tax imposed by section 3321(b) on the rail wages paid to him (as determined under section 3321(b)(2)) during each calendar quarter within a taxable period. Form CT-2 is the form prescribed for use in making the return. One original and a duplicate of each return on Form CT-2 shall be filed with the director of the service center as designated in the instructions to Form CT-2. Rail wages taxable under section 3321(b) shall be reported in the return required under this section for the return period in which they are actually paid unless they were constructively paid in a prior return period, in which case such wages shall be reported only in the return for such prior period.

(b) *Time and place for filing returns.* For provisions relating to the time and place for filing returns, see § 31.6071(a)-1T and § 31.6091-1, respectively.

Par. 3. A new § 31.6071(a)-1T is added immediately following existing § 31.6071(a)-1 to read as follows:

§ 31.6071(a)-1T Time for filing returns with respect to the railroad unemployment repayment tax (temporary).

(a) *In general.* Each return of the taxes imposed under section 3321 (a) and (b) required to be made under § 31.6011(a)-3AT shall be filed on or before the last day of the second calendar month following the period for which it is made.

(b) *Last day for filing.* For provisions relating to the time for filing a return when the prescribed due date falls on Saturday, Sunday, or a legal holiday, see the provisions of § 301.7503-1 of this chapter (Regulations on Procedure and Administration).

(c) *Late filing.* For additions to the tax in the case of failure to file a return within the prescribed time, see the provisions of § 301.6651-1 of this chapter (Regulations on Procedure and Administration).

Par. 4. Section 31.6157-1T is added immediately following existing § 31.6157-1 to read as follows:

§ 31.6157-1T Cross reference (temporary).

For provisions relating to the time and manner of depositing the railroad unemployment repayment tax imposed by section 3321(a), see § 31.6302(c)-2AT.

Par. 5. A new § 31.6302(c)-2AT is added immediately following existing § 31.6302(c)-2 to read as follows:

§ 31.6302(c)-2AT Use of Government depositaries in connection with the railroad unemployment repayment tax (temporary).

(a) *Effective date.* The provisions of this section apply with respect to the tax imposed by section 3321(a) on rail employers (as defined in section 3323(a)) on wages paid on or after July 1, 1986, during a taxable period.

(b) *Requirement*—(1) *Rail employers*—(i) *In general.* Except as provided in this section, every rail employer who is required by section 6157(d) to compute the tax imposed by section 3321(a) on a quarterly basis shall deposit the amount of the tax so computed with respect to a calendar quarter (other than the fourth quarter of a calendar year) with a Federal Reserve bank or with an authorized financial institution on or before the last day of the first calendar month following the close of the calendar quarter.

(ii) *Special rule for certain rail employers.* If, for the calendar year prior to the calendar year immediately preceding the current calendar year, the aggregate amount of taxes imposed under sections 3202 and 3221 of the Code (relating to the railroad retirement tax) with respect to an employer equaled or exceeded $1,000,000, such employer shall (except as provided below) deposit his undeposited railroad unemployment repayment tax imposed by section 3321(a) with respect to the current calendar year at the time such tax would otherwise be required to be deposited under this section in the manner set forth in Revenue Procedure 83-90, 1983-2 C.B. 615 (relating to transfers by wire to the Treasury). The funds transfer message described in Revenue Procedure 83-90 (with respect to the railroad retirement tax) shall be completed in the same manner as is prescribed in that Revenue Procedure, except that the amount required by item 12(f) shall be the amount of the railroad unemployment repayment tax (to be labeled as such by the rail employer). Item 12(g) is to be disregarded with respect to the use of the Revenue Procedure for deposits of the railroad unemployment repayment tax. A wire transfer required to be made by a rail employer with respect to the railroad unemployment repayment tax shall be made separately from any wire transfer required to be made with respect to any other tax.

(2) *Special rule where accumulated amount does not exceed $100.* The provisions of paragraph (b)(1) of this section shall not apply with respect to any calendar quarter if the amount of tax imposed by section 3321(a) for such calendar quarter as computed under section 6157, plus unpaid amounts for prior calendar quarters within the taxable period, does not exceed $100.

(3) *Requirement for deposit in lieu of payment with return.* If the amount of the tax reportable on a return of tax on Form CT-1 for a taxable period (as defined in section 3322(a)) exceeds by more than $100 the sum of the amounts deposited pursuant to paragraph (b)(1) of this section for such taxable period, the rail employer shall, on or before the last day of the first calendar month following the period, deposit the balance of the tax due with a Federal Reserve bank or with an authorized financial institution.

(4) *Special rule for third calendar quarter of 1986.* Notwithstanding paragraph (b)(1)(i) of this section, every rail employer required by section 6157(d) to compute the tax imposed by section 3321(a) for the third calendar quarter of 1986 shall deposit the tax so computed on or before December 15, 1986, in the manner provided by this section.

(c) *Depositary forms.* The provisions of paragraphs (b) and (c) of § 31.6302(c)-2, relating to depositary forms, are incorporated in this § 31.6302(c)-2A by reference.

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

Par. 6. The authority for Part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

§ 602.101 [Amended]

Par. 7. Section 602.101(c) is amended by inserting in the appropriate places in the table: "§ 31.6011(a)-3AT * * * 1545-0955, "§ 31.6071(a)-1T * * * 1545-0955 "§ 31.6157-1T * * * 1545-0955 and "§ 31.6302(c)-2AT * * * 1545-0955."

There is a need for immediate guidance with respect to the provisions contained in this Treasury decision. For this reason, it is found impracticable to issue it with notice and public procedure under subsection (b) of section 553 of title 5 of the United States Code or subject to the effective date limitation of subsection (d) of that section.

P.E. Coates,

Acting Commissioner of Internal Revenue.

Approved: October 28, 1986.

J. Roger Mentz,

Assistant Secretary of the Treasury.

[FR Doc. 86-24983 Filed 10-31-86; 1:28 pm]

BILLING CODE 4830-01-M

POSTAL SERVICE

39 CFR Part 776

Organizational Changes; Floodplain Management and Protection of Wetlands

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: The purpose of this document is to reflect in the postal procedures on floodplain management and protection of wetlands certain changes in the organizational structure of the real estate and buildings function of the Postal Service at Headquarters and the field.

EFFECTIVE DATE: November 5, 1986.

FOR FURTHER INFORMATION CONTACT: Frank R. Rowan, (202) 268-3124.

SUPPLEMENTARY INFORMATION:

List of Subjects in 39 CFR Part 776

Environmental impact statements, Flood plains, Postal Service.

Accordingly, Part 776 of 39 CFR is amended as follows:

PART 776—FLOODPLAIN MANAGEMENT AND PROTECTION OF WETLANDS PROCEDURES

1. The authority citation for Part 776 continues to read as follows:

Authority: 39 U.S.C. 401.

§ 776.2 [Amended]

2. In § 776.2, strike out "Real Estate and Buildings" and insert "Facilities" in lieu thereof.

§ 776.5 [Amended]

3. In § 776.5, in paragraphs (g) and (h), strike out "HQ Director, Office of Program Planning, RE&B Department" and insert "Facilities Service Center Director" in lieu thereof; in paragraph (i), strike out "Regional Director, RE&B Department" and insert "Facilities Service Center Director" in lieu thereof; in paragraph (f), the introductory text is revised to read as follows:

* * * * *

(f) *Reevaluation.* If, after consideration of the Site Planning Report, Environmental Assessment, and preliminary Economic Analysis Report, the determination is that there appears to be no practicable alternative to locating in a floodplain or wetland, a final reevaluation of alternatives must be conducted. The Facilities Service Center Director is responsible for this reevaluation. To facilitate this reevaluation, the following data must be submitted to the Facilities Service Center Director:

* * * * *

Fred Eggleston,

Assistant General Counsel, Legislative Division.

[FR Doc. 86-24991 Filed 11-4-86; 8:45 am]

BILLING CODE 7710-12-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 86-158; RM-5245]

Radio Broadcasting Services; Boonville, NY

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 267A for Channel 268A at Boonville, New York, at the request of Oswego-Jefferson Broadcasting Corporation. The substitution of channels could permit Station WSCP-FM, Pulaski, New York to change transmitter site and operate with maximum Class A facilities. The applicants for Channel 268A at Boonville, the Atwood Broadcasting Corp. and J & S Broadcasting will be allowed to amend their applications to specify the new channel without loss of filing protection. With this action, this proceeding is terminated.

EFFECTIVE DATE: December 1, 1986.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, (202) 634-6530, Mass Media Bureau.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 86-158, adopted September 30, 1986, and released October 23, 1986. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. In § 73.202(b), the table of allotments is amended, under New York, by revising Channel 268A to 267A for Boonville.

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Divsion, Mass Media Bureau.

[FR Doc. 86-24947 Filed 11-4-86; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 85-260; RM-4955]

Television Broadcasting Services; Eldon, MO

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 270A to Eldon, Missouri, as that community's second FM broadcast service, in response to a petition filed by Roy D. Williford. With this action, this proceeding is terminated.

EFFECTIVE DATE: December 1, 1986.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle (202) 634-6530, Mass Media Bureau.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 85-260, adopted October 3, 1986, and released October 23, 1986. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Television Broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. In § 73.202(b), the table of allotments is amended under the entry of Eldon, Missouri, to add Channel 270A.

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 86-24946 Filed 10-31-86; 8:45 am]

BILLING CODE 6712-01-M

INTERSTATE COMMERCE COMMISSION

49 CFR Parts 1135 and 1312

[Ex Parte No. 290 (Sub-No. 2)]

Railroad Cost Recovery Procedures; Correction

AGENCY: Interstate Commerce Commission.

ACTION: Final rule; correction.

SUMMARY: At 51 FR 37035, October 17, 1986, the Commission modified its rules governing railroad cost recovery procedures by requiring railroads to adjust their cost recovery tariffs to take into account declines in the rail cost adjustment factor. That notice contained an omission of language, which this notice corrects.

FOR FURTHER INFORMATION CONTACT: Craig M. Keats (202) 275-7602.

SUPPLEMENTARY INFORMATION: In the rules appearing at 51 FR 37035, paragraph (k)(3) of § 1312.17 is correctly added to read as follows:

PART 1312—[CORRECTED]

§ 1312.17 Amendments.

* * * * *

(k) * * *

(3) All cost recovery tariffs filed with the Commission shall state that they are being in conformity with the rules in 49 CFR 1135.1 and 1312.17, and shall be amended under the same timetable applicable to cost recovery rate increases, to reflect declines in the cost index. Any declines in the index below the level in effect on December 31, 1985, will be addressed by postponing authorizations for future cost recovery rate increases pursuant to a "banking" procedure described more fully in Ex Parte No. 290 (Sub-no. 2), *Railroad Cost Recovery Procedures,* served October 17, 1986.

* * * * *

Noreta R. McGee,

Secretary.

[FR Doc. 86-24981 Filed 11-4-86; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 216

[Docket No. 60742-6202]

Taking and Importing of Marine Mammals; Emergency Interim Rule and Request for Comments

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Emergency interim rule and request for comment.

SUMMARY: NOAA issues this emergency interim rule to amend the importation requirements for yellowfin and bigeye tuna which are effective after the U.S. tuna fishermen are prohibited from setting their nets around porpoise. This rule is intended to modify and clarify an Interim Rule published on September 16, 1986.

EFFECTIVE DATE: November 4, 1986. Comments must be received on or before November 28, 1986.

ADDRESS: Comments may be mailed to the Assistant Administrator for Fisheries, National Marine Fisheries Service, NOAA, Department of Commerce, Washington, DC 20235.

FOR FURTHER INFORMATION CONTACT: E.C. Fullerton, Director, Southwest Region, NMFS, (213) 514-6196, or Robert B. Brumsted, Acting Director, Office of Protected Species and Habitat Conservation, NMFS, (202) 673-5350.

SUPPLEMENTARY INFORMATION: The NMFS issued an interim rule on September 16, 1986 (51 FR 32786), which amended 50 CFR 216.24 to better enforce the quota on incidental porpoise mortality. That amendment imposed restrictions on United States tuna fishermen landing yellowfin and bigeye tuna from the eastern tropical Pacific Ocean. It also required that any yellowfin or bigeye tuna offered for importation into the U.S. must not have been caught in a manner proscribed to U.S. tuna fishermen. In this case, that would mean the imported tuna must be demonstrated not to have been caught in association with porpoise during the period the U.S. fleet is prohibited from setting on porpoise. For tuna caught on fishing trips that ended before the closure date and offered for import after the closure date, the interim rule required (50 Part 216.24(e)(9)(iv)(B)) that the import documentation include the date those lots were placed in a bonded warehouse. U.S. companies that import tuna have raised concerns that the lack of bonded warehouses, especially ones equipped for cold storage, in most of the exporting nations would unnecessarily restrict some imports, as would delays inherent in unloading tuna from vessels immediately prior to the closure.

This amendment expands the range of acceptable methods of documenting that the imported tuna was caught on a fishing trip that ended before the porpoise closure. The NMFS will accept a declaration by a responsible government official that the tuna offered for import came from a vessel that was in port waiting to unload or that the tuna was aboard a common carrier on the effective date of the closure. In either of these cases the intent of the interim rule is met.

This change requires that paragraph (e)(9)(i) be revised to recognize that tuna on a common carrier or on board a fishing vessel in port waiting to unload on the date of the closure is acceptable for importation. Also the instructions for preparing the official declaration are modified in paragraph (e)(9)(iv) to reflect this change.

U.S. flag vessels of 400 short tons carrying capacity or less are exempt from the yellowfin and bigeye tuna restrictions because vessels of this size class normally are incapable of fishing on porpoise. This amendment extends similar exemption to foreign-flag vessels of 400 short tons or less and the tuna from which is imported into the United States. Paragraph (e)(9)(iv) is revised by adding a new subparagraph (E) to reflect this change.

Classification

The NMFS has determined that this rule will result in no significant impacts on the environment other than those already discussed in the final environmental impact statement (EIS) on Proposed Amendments to the Regulations Governing the Taking of Marine Mammals Associated with Tuna Purse Seining Operations, published in December 1985, and the environmental assessment on yellowfin tuna importation released in August 1986. Therefore, this action does not require the preparation of additional documentation. Copies of these

documents may be obtained by writing to NMFS (see address).

This emergency interim rule is exempt from the normal review procedures of Executive Order 12291 as provided in section 8(a)(1) of that Order. This rule is being reported to the Director of the Office of Management and Budget, with an explanation of why it is not possible to follow the procedures of that Order.

The porpoise quota was reached on October 21, 1986. In order to allow prompt importation of tuna taken before the closure these regulations must go into effect immediately. Therefore, NMFS finds that it is impracticable and contrary to the public interest to provide notice and an opportunity to comment on or to delay for 30 days the effective date of these regulations under the provisions of section 553(b)(B) and (d) of the Administrative Procedure Act.

The Regulatory Flexibility Act does not apply to this rule. As an emergency rule issued under 5 U.S.C. 553(b)(B), it is not required by section 553 to be published as a proposed rule with opportunity for public comment. In addition, no other law requires such publication.

This rule does not contain collections of information subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 50 CFR Part 216

Administrative practice and procedure, Imports, Marine mammals, Reporting and recordkeeping requirements, Transportation.

Dated: October 31, 1986.

Carmen J. Blondin,

Deputy Assistant Administrator for Fisheries Resources Management, National Marine Fisheries Service.

PART 216—[AMENDED]

For the reasons set out in the preamble, 50 CFR Part 216 is amended as follows:

1. The authority citation for Part 216 continues to read as follows:

Authority: 16 U.S.C. 1361 *et seq.*, unless otherwise noted.

§ 216.24 [Amended]

2. In § 216.24, paragraph (e)(9) is revised to read as follows:

(e) * * *

(9)(i) *Restrictions on yellowfin and bigeye tuna imports.* No yellowfin or bigeye tuna harvested by a purse seine vessel fishing on porpoise in the eastern tropical Pacific Ocean (the "ETP") during the period that such fishing is prohibited for vessels of the United States under § 216.24(a)(4)(i) in 1986, may be imported into the United States. Any tuna harvested in the ETP before the closure date must be placed in a bonded warehouse, aboard a common carrier, or aboard a vessel in port awaiting to unload before the closure date in order to be imported into the United States after the closure date.

(ii) *Definitions for purposes of § 216.24(e)(9).* (A) "Closure date" means the date on which the allowable quota on incidental mortality permitted under the general permit will be reached as announced under the provisions of § 216.24(d)(2)(i)(B).

(B) "Closure period" means a period beginning on the closure date and ending on December 31, 1986, during which United States purse seine vessels are prohibited from catching tuna by setting on porpoise.

(C) "ETP" means the eastern tropical Pacific Ocean which includes the Pacific Ocean area bounded by 40° N. latitude, 40° S. latitude, 160° W. longitude, and the coastline of North, Central, and South America.

(D) "NMFS" means the National Marine Fisheries Services, National Oceanic and Atmospheric Administration, Department of Commerce.

(iii) *Authorization required for yellowfin and bigeye tuna imports.* Any yellowfin or bigeye tuna harvested by a vessel of a country for which the Assistant Administrator has made a finding under paragraph (e)(5)(i) of this section, that is offered for importation between the closure date and June 30, 1987, must be accompanied by a letter of authorization from NMFS.

(iv) *Procedure to obtain letter of authorization.* Any person desiring to obtain a letter of authorization from NMFS to allow the importation of yellowfin or bigeye tuna must submit to the Regional Director, NMFS, 300 S. Ferry Street, Terminal Island, California 90731, a declaration signed by a responsible government official of the country whose flag vessel caught the tuna, that the tuna being offered for importation was not taken by fishing on porpoise during the closure period. The declaration of the responsible government official must include the information listed in either paragraph (e)(9)(iv) (A), (B), (C), (D), or (E) of this section, as appropriate.

(A) If the tuna to be imported was taken on a fishing trip any part of which was in the ETP during the closure period, the declaration must include the following information:

(*1*) The name of the vessel(s) which harvested the tuna,

(*2*) The date of the trip(s) on which the tuna was harvested,

(*3*) A statement that the vessel carried an observer approved by the government on every portion of the trip that occurred after the closure date, and

(*4*) A statement that the observer certified that no tuna was harvested by fishing on porpoise after the closure date.

(B) If the tuna to be imported was taken on a fishing trip in the ETP that ended before the closure date, the declaration must include the following information:

(*1*) The names of the vessel(s) which harvested the tuna,

(*2*) The dates of the trip(s) on which the tuna was harvested, and one of the following sets of information:

(*i*) The date the tuna arrived in port, the date when the tuna was placed in a bonded warehouse, the date the tuna was removed from the bonded warehouse, and the name and address of the bonded warehouse. Documentation establishing that the tuna was in port on the closure date and documentation from the bonded warehouse that shows the dates that the tuna was placed into the warehouse and taken out of the warehouse must accompany the declaration.

(*ii*) The date the tuna arrived in port, the date when the tuna was placed on a common carrier for shipping, and the name and address of the common carrier for shipping, and the name and address of the common carrier. Documentation establishing that the tuna was in port on the closure date and documentation from the common carrier that shows the date(s) that the tuna was placed aboard the carrier must accompany the declaration.

(*iii*) The date the tuna arrived in port, awaiting unloading, the date the vessel is schedule for unloading, the intended disposition of the tuna (i.e., common carrier, bonded warehouse, offloading in Puerto Rico, Venezuela, etc.) and documentation from a port official verifying the arrival date of the vessel.

(C) If the tuna to be imported was taken by fishing on porpoise on a fishing trip that began after the closure period ends, the declaration must include the following information:

(*1*) The names of the vessel(s) which harvested the tuna,

(*2*) the dates of the trip(s) on which the tuna was harvested, and

(*3*) The location of the harvest.

(D) If the tuna to be imported was taken on a fishing trip on which the vessel was not in the ETP for any portion of the trip, the declaration must include the following information:

(*1*) The names of the vessel(s) which harvested the tuna,

(2) The dates of the trip(s) on which the tuna was harvested, and

(3) The areas in which the vessel(s) was during the trip(s) (e.g., the western Pacific Ocean).

(E) If the tuna to be imported was taken in part or entirely by tuna purse seine vessels of 400 short tons carrying capacity or less, (and any remaining tuna was not caught by tuna purse seine vessels of larger than 400 short tons) the declaration must include the following information:

(1) The name(s) of the vessel(s) which caught the tuna;

(2) The carrying capacity in short tons of the(se) vessel(s); and

(3) the quantity of tuna being imported that was caught by the(se) vessel(s).

(v) *Disposition of tuna not accompanied by required documentation.* (A) Tuna that requires a letter of authorization under paragraph (e)(9)(iii) above that is offered for importation without the required letter of authorization must be either—

(1) Exported under Customs supervision within 60 days,

(2) Placed into a bonded warehouse, or

(3) Disposed of under Customs laws and regulations, as long as that disposition does not result in its introduction into the United States.

(B) The importer will remain liable for any expenses incurred in the storage and/or disposal of tuna refused admission under these regulations. If, within 60 days of fish being placed into a bonded warehouse, the District Director of Customs receives appropriate documentation for that fish, the fish will be allowed to be entered into the United States, otherwise it will be disposed of as set forth in paragraph (e)(9)(v) (A) of (C) of this section.

* * * * *

[FR Doc. 86-24966 Filed 11-4-86; 8:45 am]
BILLING CODE 3510-22-M

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50 CFR Part 652

[Docket No. 60229-6072]

Atlantic Surf Clam Fishery Closure

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of surf clam fishery closure.

SUMMARY: NOAA issues this notice to close the Nantucket Shoals Area surf clam fishery for the remainder of 1986. The action is required to prevent significant overharvest of surf clam allocations. The intended effect is to prohibit further harvest of the resource.

EFFECTIVE DATE: October 31, 1986.

FOR FURTHER INFORMATION CONTACT: Bruce Nicholls, (617) 281-3600 ext. 263.

SUPPLEMENTARY INFORMATION: Regulations implementing the Fishery Management Plan for Atlantic Surf Clam and Ocean Quahog Fisheries contain at § 652.22(d) a provision to close any of the regulated fisheries if the Regional Director, Northeast Region, NMFS, upon review of available information including current and expected levels of fishing effort, determines that the fishery quota will be exceeded.

Logbooks submitted by fishermen and processors show that as of October 24, 1986, surf clam harvests from the Nantucket Shoals Area during 1986 reached 204,000 bushels. The annual quota for the area is 200,000 bushels. This level of harvest occurred despite action by the Mid-Atlantic and New England Councils directing the Regional Director to adjust harvest figures downward by 23,000 bushels to eliminate from quota consideration amounts taken on Stellwagen Bank, which is within the Nantucket Shoals Area but north of Cape Cod. The fishery quota has thus been exceeded and closure is mandatory. This closure might not have been necessary if trip limits could have been imposed in accordance with provisions of Amendment 6 to the FMP. However, failure of operators in the fishery to submit timely reports of their fishing activity frustrated NOAA's ability to impose catch restrictions. NOAA is investigating means to ensure better compliance with the mandatory logbook program by operators in the Nantucket Shoals Area fishery.

The fishery will reopen on January 1, 1987.

Other Matters

This action is taken under the authority of 50 CFR Part 652 and is in compliance with Executive Order 12291.

List of Subjects in 50 CFR Part 652

Fisheries, Reporting and recordkeeping requirements.

Dated: October 31, 1986.

Carmen J. Blondin,

Deputy Assistant Administrator For Fisheries Resource Management, National Marine Fisheries Service.

[FR Doc. 86-25020 Filed 10-31-86; 4:23 am]
BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 51, No. 214
Wednesday, November 5, 1986

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Federal Grain Inspection Service

7 CFR Parts 57 and 68

U.S. Standards for Hay and Straw

AGENCY: Federal Grain Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: According to the requirements for the periodic review of existing regulations, the Federal Grain Inspection Service (FGIS) has reviewed the U.S. Standards for Hay and Straw. Pursuant to this review, FGIS proposes to remove these standards from the regulations. Official services would no longer be performed for these agricultural commodities. The hay and straw standards are authorized by the Agricultural Marketing Act of 1946 (the Act). These inspection programs no longer meet the objectives of the Act. Therefore, the programs should be terminated and applicable provisions of the regulations removed.

DATE: Comments must be submitted on or before January 5, 1987.

ADDRESS: Comments must be submitted in writing to Lewis Lebakken, Jr., Information Resources Staff, RM, USDA, FGIS, Room 1661 South Building, 1400 Independence Avenue, SW., Washington DC 20250, telephone (202) 382–1738. All comments received will be made available for public inspection at the above address during regular business hours (7 CFR 1.27(b)).

FOR FURTHER INFORMATION CONTACT: Lewis Lebakken, Jr., telephone (202) 382–1738.

SUPPLEMENTARY INFORMATION: The U.S. Standards for Hay and Straw were established under the authority of the Agricultural Marketing Act of 1946, as amended (7 U.S.C. 1621 *et seq.*). Pursuant to section 203(c) of the Act (7 U.S.C. 1622(c)), the Administrator is authorized to develop and improve standards for all assigned agricultural commodities.

Executive Order 12291

This proposed rule has been issued in conformance with Executive Order 12291 and Departmental Regulations 1512–1. The action has been classified as nonmajor because it does not meet the criteria for a major regulation established in the Order.

Regulatory Flexibility Act Certification

D.R. Galliart, Acting Administrator, FGIS has determined that this proposed rule will not have a significant economic impact on a substantial number of small entities because those persons who apply the standards and most potential users of hay and straw inspection services do not meet the requirements for small entities as defined in the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Further, the requests for official services for hay and straw have declined over the years to an average of less than 50 requests per year, the majority of which are requested by an agency within USDA itself. If the hay and straw standards are removed from the regulations, users of official inspection services could in the alternative, request unofficial services, as has been the recent trend, from available state programs or commercial laboratories.

Standards Review

The review of the standards included a determination of the continued need for the standards. The objective was to evaluate if the standards facilitate the marketing of hay and straw.

The U.S. Standards for Hay (7 CFR Part 57, Subpart A, Sections 57.1–57.13) and the U.S. Standards for Straw (7 CFR Part 57, Subpart B, Sections 57.50–57.52) were established in 1925 and 1933, respectively. Hay and straw inspection are authorized by the Agricultural Marketing Act of 1946 as amended (7 U.S.C. 1621–1627). Pursuant to that Act, the Secretary is authorized to provide for the inspection of certain agricultural products or commodities, including hay and straw. The program is a voluntary program. The regulations for inspection and certification of certain agricultural commodities and the products of including hay and straw, appear in Subpart A of Part 68 (7 CFR 68.1 through 68.54). If the hay and straw standards are removed from the regulations, the only change to Subpart A of Part 68 would be revision of § 68.42a, Fees for Certain Federal Inspection Services to remove references to hay and straw fees.

The hay and straw standards were used frequently until the early 1950's, but the number of official inspections has declined appreciably since that time. The highest number of official inspections occurred in fiscal year 1946 when 25,067 hay and straw inspections were performed. During the last decade, less than 50 official inspections were performed in most years. The number of requests for service are at such a level as to raise concerns regarding the continued effectiveness and viability of the hay and straw program.

The decrease in the number of official hay and straw inspections has primarily resulted from a decline in the purchase of these commodities by various government installations. Prior to World War II about half of the hay and straw which was officially inspected was used by the U.S. Army for horses and mules. Following that period, use of these animals began to decline as did requests for hay and straw inspections. The majority of recent inspections has been for hay and straw purchased by the USDA, Agricultural Research Center, Beltsville, Maryland.

U.S. Standards for Hay

In the hay standards, hay is defined as the harvested, unthreshed herbage of forage plants which meets the requirements of one of the various classes in groups I to XI; i.e., (I) Alfalfa and Alfalfa Mixed Hay; (II) Timothy and Clover Hay; (III) Prairie Hay; (IV) Johnson and Johnson Mixed Hay; (V) Grain, Wild Oat, Vetch, and Grain Mixed Hay; (VI) Lespedeza and Lespedeza Mixed hay; (VII) Soybean and Soybean Mixed Hay; (VIII) Cowpea and Cowpea Mixed Hay; (IX) Peanut and Peanut Mixed Hay; (X) Grass Hay; and (XI) Mixed Hay. Hay cannot be coarse and woody, nor can it contain more than 35 percent foreign material or moisture. The numerical or Sample grade designation of hay is determined by generally subjective grading factors in the standards. Depending on the class of hay inspected, leafiness, color, foreign material, and/or maturity are the primary grading factors.

The absence of objective grading factors has been suggested as another reason for minimal use of the hay

standards. Forage researchers, in particular, have expressed concern regarding the subjective grading factors and in their opinion such factors are poor measurements of quality, especially for feed value. Objective analyses, such as protein and fiber content, are considered to be more accurate indicators of nutrient content for balancing a livestock ration.

In the mid- to late-1970's and early-1980's, FGIS studied the feasibility of revising the hay standards to incorporate objective testing procedures as grading factors. The objective tests under consideration were crude protein, acid detergent fiber, neutral detergent fiber, and a calculated measurement of relative feed value. Near Infrared Reflectance (NIR) instrumentation was the testing method of choice for these determinations. However, NIR analysis was not feasible since calibration equations had not been developed for testing the major types of hay on a nationwide basis. In addition, installation of NIR equipment for analysis of hay and straw across the country would cause increases in program costs which, in our view, would require increases in inspection fees.

Use of wet chemical analysis to test hay was not considered a viable option to NIR instrumentation because of time and cost concerns. In addition, the Beltsville Testing Laboratory is the only FGIS laboratory capable of analyzing hay. Consequently, no substantive changes were made to the standards to include objective grading factors. During recent discussions with the industry, the majority of hay buyers and sellers indicated that official inspection is not needed to facilitate hay marketing. There was some suggestion that official inspections could cause delays in shipments of hay. Marketed hay moves fairly quickly and buyers and sellers are often located in areas which are not readily accessible to official inspection personnel. Also, sampling and inspection procedures are applicable for small hay bales. These procedures are difficult or impossible to perform on large bales and on hay pellets, wafers, and cubes.

Most hay industry members have stressed that official inspection is not necessary However, they agree that it is preferable to have unofficial uniform objective testing procedures to market hay nationwide. In an effort to develop uniform analysis procedures between commercial hay testing laboratories, members of the American Forage and Grassland Council and the National Hay Association established the National Alfalfa Hay Testing Association. This Association has organized a committee to approve and monitor commercial laboratories for uniform, accurate alfalfa hay testing. A number of laboratories on a nationwide scale currently participate in this program, and additional laboratories are expected to be approved in the near future. Since the majority of hay produced and marketed in the U.S. is alfalfa or alfalfa mixed hay, objective testing of this type of hay has predominated over other legume and grass hays.

In addition to FGIS, cooperating states perform official inspections of both hay and straw. There are presently 13 states performing the official services. If the official hay and straw programs are eliminated, these states could continue their programs under state authorities, as applicable. Also private inspection agencies could initiate unofficial inspection services for these commodities.

U.S. Standards for Straw

In the straw standards, straw is defined as the stems, leaves, and chaff of wheat, oats, barley, rye, and rice which remain after threshing. The numerical or Sample grade designation in the standards is determined by color and percentage of chaff.

The straw standards have generally been used less as a marketing tool than the hay standards. Not only is less straw marketed than hay, but fewer quality concerns are associated with straw since most is used for livestock bedding. The present and potential demand for straw inspection services on a yearly basis is insignificant.

For these reasons, the Service has determined that the official inspection, certification, and identification of the class, quality, quantity, and condition of hay and straw does not facilitate trading of these commodities and that the programs do not meet the objectives of the Act. FGIS, therefore, proposes that the U.S. Standards for Hay and the U.S. Standards for Straw be removed as official standards from the regulations under the Agricultural Marketing Act of 1946. In addition, it is proposed that the fees relating to the inspection of hay and straw be removed from 7 CFR Part 68.

List of Subjects

7 CFR Part 57

Hay, Straw, Exports.

7 CFR Part 68

Administrative practice and procedure, Agricultural commodities, Beans, Peas, Reporting and recordkeeping requirements, Rice.

PART 57—[REMOVED]

1. It is proposed to remove Part 57—United States Standards for Hay and Straw.

PART 68—[AMENDED]

2. The authority citation for Part 68 continues to read as follows:

Authority: Secs. 203, 205, 60 Stat. 1087, 1090, as amended; 7 U.S.C. 1622, 1624, unless otherwise noted.

3. 7 CFR Part 68, Subpart A, § 68.42a is amended by revising the undesignated center heading and Table 2 to read as follows:

§ 68.42a Fees for Certain Federal Inspection Services.

* * * * *

Fees for Inspection of Hops, Pulses, and Miscellaneous Processed Commodities

* * * * *

TABLE 2.—UNIT RATES

Service [1]	Bean; pea; lentil	Hops	Non-graded, non-processed commodities
Lot or sample (per lot or sample)		$22.40	
Field run (per lot or sample)	$15.00		
Other than field run (per lot or sample)	11.20		
Factor analysis (per factor)	3.75		3.75
Extra copies of certificates (per copy)	3.00	3.00	3.00

[1] Fees apply to determinations (original or appeal) for kind, class, grade, factor analysis, and any other quality designation as defined in the official U.S. Standards or applicable instructions when performed at other than the point of service.

* * * * *

Dated: October 15, 1986.

D.R. Galliart,

Acting Administrator.

[FR Doc. 86-24973 Filed 11-4-86; 8:45 am]

BILLING CODE 3410-EN-M

Agricultural Marketing Service

7 CFR Parts 1064, 1102, 1106, 1108, 1126, and 1138

[Docket Nos. AO-231-A54 et al.]

Milk in the Texas and Certain Other Marketing Areas; Decision on Proposed Amendments to Marketing Agreements and to Orders

7 CFR Parts	Marketing areas	Docket Nos.
1126	Texas	AO-231-A54
1064	Greater Kansas City	AO-23-A57
1102	Fort Smith, Arkansas	AO-237-A34-RO1
1106	Southwest Plains	AO-210-A45-RO1
1108	Central Arkansas	AO-243-A39
1138	Rio Grande Valley	AO-335-A32

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rules.

SUMMARY: This final decision proposes to modify the plant location adjustments to prices under the Texas, Greater Kansas City, Southwest Plains, and Central Arkansas Federal milk marketing orders. The location adjustment changes are necessary to align prices among Federal order markets to conform with the Class I differentials mandated by the Food Security Act of 1985 that were implemented on May 1, 1986. The Class I differentials also changed the price relationships among Federal order markets and require changes to the location adjustment provisions to align prices at competing plants on an intra- and inter-order basis. The changes are necessary to promote the orderly marketing of milk in the affected markets. The location adjustment amendments are based on proposals by cooperative associations and proprietary handlers that were considered at a public hearing held March 4–7, 1986, in Irving, Texas.

FOR FURTHER INFORMATION CONTACT: John F. Borovies, Marketing Specialist, Dairy Division, Agricultural Marketing Service, U. S. Department of Agriculture, Washington, DC 20250, (202) 447–2089.

SUPPLEMENTARY INFORMATION: This administrative action is governed by the provisions of sections 556 and 557 of Title 5 of the United States Code and, therefore, is excluded from the requirements of Executive Order 12291.

The Regulatory Flexibility Act (5 U.S.C. 601–612) requires the Agency to examine the impact of a proposed rule on small entities. Pursuant to 5 U.S.C. 605(b), the Administrator of the Agricultural Marketing Service has certified that this action will not have a significant economic impact on a substantial number of small entities. The amendments propose to modify the transportation allowances provided under the four orders to make them conform more closely to the economic conditions that currently exist in the marketplace. The main economic conditions involved are the implementation of the Class I differentials mandated by the Food Security Act of 1985 effective May 1, 1986, and the cost of transporting bulk milk as reflected in such differentials. Reflection of the changed marketing conditions through amendments to plant location adjustments to order prices will not result in a significant added price impact on regulated handlers.

Prior documents in this proceeding:

Notice of Hearing: Issued February 14, 1986; published February 21, 1986 (51 FR 6250).

Emergency Final Decision: Issued May 8, 1986; published May 16, 1986 (51 FR 17982).

Final Order: Issued June 4, 1986; published June 10, 1986 (51 FR 20955).

Tentative Decision: Issued July 9, 1986; published July 15, 1986 (51 FR 25539).

Interim Amendments: Issued August 5, 1986; published August 11, 1986 (51 FR 28687).

Preliminary Statement

A public hearing was held upon proposed amendments to the marketing agreements and the orders regulating the handling of milk in the Texas and certain other marketing areas. The hearing was held, pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and the applicable rules of practice 7 CFR Part 900, at Irving, Texas, on March 4–7, 1986. Notice of such hearing was issued on February 14, 1986 and published February 21, 1986 (51 FR 6250).

Upon the basis of the evidence introduced at the hearing and the record thereof, the Deputy Assistant Secretary, Marketing and Inspection Services, on July 9, 1986, filed with the Hearing Clerk, United States Department of Agriculture, a tentative decision containing notice of the opportunity to file written exceptions thereto. The hearing notice specifically invited interested persons to present evidence concerning the probable regulatory and informational impact of the proposals on small businesses. To the extent that this issue was raised, it is considered in the following findings and conclusions. The material issues, findings and conclusions, rulings, and general findings of the tentative decision are hereby approved and adopted and are set forth in full herein, subject to the following modifications:

Under Issue 1a: 1. Two paragraphs are added after the 20th paragraph.

2. Paragraph 27 is revised for clarification.

3. Two paragraphs are added after the 27th paragraph.

Under Issue 1b: 1. Paragraph 44 is revised for clarification as a result of points raised in exceptions.

2. Eight paragraphs are added after the 46th paragraph.

3. One paragraph is added after the 65th paragraph.

4. One paragraph is added after the 73rd paragraph.

Under Issue 1c: Two paragraphs are added after the 18th paragraph.

Under Issue 1d: 1. Paragraph 2 is revised as a result of points raised in exceptions.

2. Two paragraphs are added after the 40th paragraph.

3. Four paragraphs are added after the 41st paragraph.

4. One paragraph is added after the 55th paragraph.

5. One paragraph is added after the 65th paragraph.

6. The last paragraph (paragraph 71) is revised as a result of points raised in exceptions and three paragraphs are added thereafter.

The material issues on the record of hearing relate to:

1. Plant location adjustments to handlers regulated under the orders regulating the handling of milk in the:

a. Greater Kansas City marketing area;

b. Southwest Plains and Fort Smith, Arkansas marketing areas;

c. Central Arkansas marketing area; and

d. Texas and Rio Grande Valley marketing areas.

2. Whether emergency marketing conditions exist with respect to issue number 1.

An additional material issue involved proposed changes to the location adjustment provisions of the Memphis, Tennessee milk order. However, this issue has been resolved by the issuance of a separate, emergency final decision and order amending the Memphis, Tennessee order.

Findings and Conclusions

The following findings and conclusions on the material issues are based on evidence presented at the hearing and the record thereof:

Background for material issue No. 1

The purpose of the hearing was to receive evidence on the economic and marketing conditions that relate to proposed amendments to the location adjustment provisions of the Federal milk order markets involved in this proceeding. The proposed location adjustment changes by dairy industry

participants were filed in response to increases in Class I differentials under 35 of 44 Federal milk marketing orders mandated by the Food Security Act of 1985. The Acting Assistant Secretary's final decision to implement the mandated differentials (of which official notice is taken) was issued subsequent to the hearing on March 14, 1986; and published March 20, 1986 (51 FR 9669). The mandated differentials were implemented on May 1, 1986. Basically, the location adjustment changes were proposed to conform with the mandated differentials which also changed the alignment of prices for milk in fluid uses among Federal order markets.

Federal orders classify milk in accordance with the form in which or the purpose for which it is used and establish minimum prices for each such use classification, which all handlers shall pay. Such prices are to be uniform as to all handlers, subject to certain permissible adjustments, including the locations at which delivery of such milk is made to handlers.

Milk used for fluid purposes (Class I) is priced at a higher level than milk in other uses. The minimum Class I price under each Federal order is determined by adding the Class I differential specified in the order to the basic formula price for the second preceding month. Since the basic formula price for any month is the same for all milk order markets, minimum Class I prices vary among markets to the extent that Class I differentials vary among markets.

The Class I differential in each Federal order market represents the additional minimum value necessary to attract a sufficient supply of milk for fluid use for each market. Historically, each Class I differential includes a factor to cover the additional costs incurred in producing milk under the rigid sanitary standards that apply to Grade A milk. The Class I differential for each market accounts for other special economic conditions relevant to each market, particularly transportation costs, which influence prices for milk in city markets. In total, the minimum price for milk in Class I uses, as well as the prices for milk in other uses, is intended to recognize the economic conditions affecting the production and marketing of milk in each market so as to bring forth a sufficient supply of milk to meet the demand for milk and dairy products in each regulated market.

An additional factor relevant to the determination of the appropriate Class I price level in each market is the relationship, or alignment, of such price with prices in other markets to recognize the cost of obtaining alternative or supplemental supplies of milk from lower cost areas. Generally, Class I prices increase from north to south in recognition of alternative sources of milk from northern, heavy supply areas. Prior to May 1, 1986, Class I prices in Federal order markets east of the Rocky Mountains generally reflected an alignment of Class I prices from the north (Eau Claire, Wisconsin) to principal cities in Federal order markets to the south at a rate approximating a cost for hauling bulk milk of 1.5 cents per hundredweight per 10 miles.

The Class I differentials in these markets were not precisely aligned on a 1.5-cent rate from Eau Claire since recognition of local marketing conditions is an essential element in the determination of the appropriate Class I price level in each market. However, Class I prices tend to reflect an alignment from north to south since the Class I price level in any market is constrained by the cost of milk in alternative markets plus the cost of hauling bulk milk from such alternative source of supply. In effect, a regulated minimum price level in each market, in the long run, cannot significantly exceed the cost of milk from an alternative, lower cost production area. Such an alignment recognizes economic alternatives and results in the lower cost area being a basing point from which price constraints in other markets are established. Eau Claire, Wisconsin, is generally recognized as the basing point for a large number of Federal order markets since it is the lowest cost area, in terms of Federal order pricing, and is in a heavy milk producing region that represents an actual and potential source of supply for markets to the south.

Effective May 1, 1986, the Class I differentials were increased by varying amounts in 35 of 44 Federal order markets as required by the Food Security Act of 1985. Such differentials were increased, at least in part, because of increases in the cost of hauling bulk milk that were not reflected in the minimum order Class I differentials effective prior to May 1, 1986. The extent to which the differentials were increased for the Federal order markets involved in the proceeding are indicated in the following table. In addition, the change in the differentials in other markets that regulate plants that have fluid milk sales in one or more of the markets involved in this proceeding, is also included in the table. The Class I differential changes in these other markets is an important consideration affecting the location adjustment changes necessary in the six remaining markets involved in this proceeding because of the need to maintain some alignment of pricing among markets for the economic reasons previously set forth.

Class I differentials	Marketing order		
	Prior to May 1	Effective May 1	Increase (Dollars per hundredweight)
Georgia	2.30	3.08	.78
Southern Illinois	1.53	1.92	.39
Greater Kansas City	1.74	1.92	.18
Nebraska-Western Iowa	1.60	1.75	.15
Iowa	1.40	1.55	.15
New Orleans-Mississippi	2.85	3.85	1.00
Greater Louisiana	2.47	3.28	.81
Memphis, Tennessee	1.94	2.77	.83
Nashville, Tennessee	1.85	2.52	.67
Paducah, Kentucky	1.70	2.39	.69
Fort Smith, Arkansas	1.95	2.77	.82
Southwest Plains	1.98	2.77	.79
Central Arkansas	1.94	2.77	.83
Lubbock-Plainview, TX	2.42	2.49	.07
Texas	2.32	3.28	.96
Central Arizona	2.52	2.52	0
Texas Panhandle	2.25	2.49	.24
Western Colorado	2.00	2.00	0
Eastern Colorado	2.30	2.73	.43
Rio Grande Valley	2.35	2.35	0

The varying increases in the Class I differentials resulted in a change in the Class I price relationships among markets. It is noted that the Class I differentials increased the most in southern areas and increased the least in northern and western areas. As a result, the price surface is the steepest among markets on a straight north-south axis and flattens out as the alignment to the south is measured from a northwest or northeast direction. In fact, on a straight east-west direction, an equal price line ($2.77 Class I differential as of May 1, 1986) has been established from Chattanooga, Tennessee, to Oklahoma City, Oklahoma, a distance of 774 miles. It is also noted that in the southwest a new price alignment has been established between Texas and New Mexico where the Class I differential now increases from west to east.

The Class I differentials that were effective on May 1, as well as those that were previously effective, apply to a specific location (or so-called base zone) prescribed by each of the orders involved in this proceeding. The base zone is a principal city, and thus a major consumption center for fluid milk products that is included within the marketing area of each order. Each of the orders also provides for adjustments to Class I and blend prices payable to producers to reflect the various locations, other than the base zone, at which milk may be received from producers. Some of the orders provide for only reductions to the base zone prices while others provide for both plus

and minus adjustments. Also, some of the orders provide for location adjustments based on the actual distance between a specific city and actual plant locations, while others provide for price zones (both inside and outside the marketing area) that relate to distances between principal cities. The specific pricing structure for each of the orders, as well as the marketing structure that provides the basis for the particular pricing arrangement, is set forth hereafter for each of the markets.

Regardless of the pricing structure employed, the purpose of location adjustments is to reflect the cost of hauling milk from where it is produced to where it is needed for use in fluid milk products. The Class I and blend prices at major-city, base zone locations are intended to attract a sufficient supply of milk to such location. To the extent that plants are located some distance from the base zone, and closer to the major supply areas for the market, Class I and blend prices are reduced to reflect the lesser hauling costs that are incurred in supplying such plants relative to plants located in the base zone. Also, in two of the markets, Class I and blend prices are increased at pricing zones that are located further from the major production areas than plants in the base zone. Thus, adjustments to Class I and blend prices reflect the cost of the economic service provided by producers to handlers at varying locations. The value of the service provided varies in terms of both distance and the cost of hauling bulk milk. The extent to which there is adequate compensation for the value of services provided raises an issue of equity, both among producers and among handlers.

Since the Food Security Act of 1985 mandated changes in the Class I pricing structure among Federal order markets, application of current location adjustments in individual markets could result in substantial price differences among plants regulated under the same or different orders. Substantial price differences at plants near to each other, or even at plants that are relatively distant from each other, because of the application of current location adjustments could affect the ability of certain plants to obtain milk supplies from current production areas. Although location adjustments reflect the cost of hauling milk from where it is produced to where it is needed, thereby providing a price incentive for milk movements, handlers operating fluid milk plants also expressed a primary concern over their ability to continue to compete with other handlers in selling fluid milk products because of substantial changes in Class I prices among competing plant locations. As a result, this hearing and three other regional hearings were held to consider proposals to amend location adjustment provisions. Official notice is taken of the Notices of Hearing for such other proceedings: Milk in the Georgia and Certain Other Marketing Areas, issued February 7, 1986, published February 13, 1986 (51 FR 5363); Milk in the Chicago Regional and Certain Other Marketing Areas, issued February 14, 1986, published February 21, 1986 (51 FR 6241); and Milk in the Upper Midwest, Nebraska-Western Iowa, and Iowa Marketing Areas, issued February 25, 1986, published March 3, 1986 (51 FR 7280). It is obviously noted that each of the hearings were held prior to the effective date of implementation of the mandated Class I differentials. Consequently, all hearing participants could only testify with respect to potential disorderly marketing conditions that would result because of the changes in inter-market price relationships and application of current location adjustments.

As a matter of procedure, it is noted that changes in the location adjustments in one market could affect the extent to which changes can or should be made in location adjustment provisions in other markets. Although the proposed location adjustment changes were set forth for individual markets in the Notice of Hearing, the testimony and evidence centered on certain price relationships among markets. Consequently, the material issues for this decision begin with the northern-most market and progress to the south. In this way, the decision can best accommodate a discussion of individual market circumstances as well as the inter-market price relationships.

As a further preliminary point, the Memphis, Tennessee milk order is a part of this regional proceeding. However, a separate, emergency final decision pertaining only to that market was issued. Official notice is taken of that decision issued by the Deputy Assistant Secretary on May 8, 1986, published May 16, 1986 (51 FR 17982). It is also noted that this proceeding on location adjustment changes was a reopening of a hearing for the Southwest Plains and Fort Smith, Arkansas orders. The prior hearing for these markets was held on November 6, 1985, at Tulsa, Oklahoma, to consider proposals to merge the marketing areas of the two orders and further expand the Southwest Plains marketing area to include additional territory in southwest Missouri and northwest Arkansas. This decision deals only with the location adjustment issues while another decision will follow on the marketing area expansion issue.

1a. Plant location adjustments for handlers under the order regulating the handling of milk in the Greater Kansas City marketing area

The Greater Kansas City order should be amended to increase the rate (from 1.5 cents to 1.7 cents) for establishing location adjustments at plants located outside the marketing area. The higher rate should apply to out-of-area plants that are more than 70 miles from the nearer of Kansas City, Missouri or Topeka, Kansas. The location adjustment would be minus 1.7 cents for each 10 miles, or fraction thereof, between the plant and the nearer of the two basing points.

The current order pricing structure provides for no location adjustments within the marketing area. The Class I and blend prices are reduced at plants outside the marketing area that are also more than 50 miles from the nearer of Kansas City, Missouri or Topeka, Kansas. Such prices are reduced by 10 cents per hundredweight for plants that are between 50 and 70 miles from the nearer basing point and by an additional 1.5 cents per hundredweight for each 10 miles beyond 70 miles from the nearer basing point. Consequently, the location adjustments reflect the classical pricing structure whereby marketing area prices are reduced in all directions to reflect the lower value associated with milk at distant locations relative to prices that are necessary to attract supplies of milk to major population centers in the marketing area.

The marketing area, within which no location adjustments apply, consists of 26 counties in Kansas and 20 counties in Missouri and has a population of about 2.3 million. The primary population centers are Kansas City, Missouri and Kansas City and Topeka, Kansas. Of the 46 counties, there are only five that have populations in excess of 100,000. Four of these counties (Johnson and Wyandotte in Kansas and Clay and Jackson in Missouri) represent the Kansas City area while the fifth county (Shawnee) represents Topeka, Kansas. These counties represent about 60 percent of the total marketing area population.

There are seven distributing plants regulated under the order, all of which are located in the marketing area. Six are located in Kansas while one is located in Missouri. Four of the plants are located in the Kansas City area while the other three are located to the west at Lawrence, Topeka, and Junction City, Kansas.

There are also four supply plants regulated under the order that are located in outlying production areas surrounding the major population centers. Two of these plants are located in Kansas, one in Missouri and one in Iowa. One of the Kansas supply plants is located in the marketing area at Sabetha (Nemaha County) which is north of Kansas City and Topeka. The other Kansas plant is located at Ottawa (Franklin County) which is adjacent to the marketing area and south of Kansas City and Topeka. Currently a minus 10-cent location adjustment applies at such location. The Missouri supply plant is at Chillicothe (Livingston County) which is adjacent to the marketing area and northeast of Kansas City. Currently, a minus 13-cent location adjustment applies at such location. The Iowa supply plant is located at Fredericksburg (Chickasaw County) which is 340 miles from Kansas City, Missouri. Currently a minus 50.5-cent location adjustment applies at this distant procurement area.

There are more than ample supplies of milk associated with the market to meet fluid milk requirements. During 1985, a monthly average of 74.3 million pounds of milk was pooled on the market, while producer milk in Class I uses averaged about 36.4 million pounds. For the year, Class I utilization of producer milk was 48.9 percent, ranging from a high of 58 percent in January to a low of 41 percent in June.

The source of the producer milk supply for the market originates on farms located in the states of Kansas, Missouri, Iowa, and Nebraska. Kansas and Missouri represent the major sources of supply, representing 49 percent and 36 percent, respectively, of the total market supply during November 1985. During the same month, Iowa represented 10 percent of the producer milk associated with the market and Nebraska 5 percent. During November of the two previous years, Kansas and Missouri producers combined represented about 87 percent and 88 percent of milk supplies during 1984 and 1983, respectively, while Iowa and Nebraska sources represented less of total supplies than they represented in 1985. Of the Kansas and Missouri supplies, most is situated relatively near to the major population centers. For example, during 1985, milk was produced in 44 of the 46 counties that comprise the marketing area and represented about two-thirds of the market's total supply of milk.

Fluid milk requirements of the market are also supplied by distributing plants that are regulated under other Federal orders. During December 1985, 15 distributing plants regulated under four different Federal orders had sales in the Greater Kansas City marketing area that represented about 28 percent of the total packaged fluid milk products disposed of in the marketing area. Three plants regulated under the Southern Illinois order represented about two percent of total sales while four Nebraska-Western Iowa plants represented about three percent of total fluid milk sales. Three Iowa plants represented about six percent of total sales while five plants regulated under the Southwest Plains order represented about 17 percent of the total fluid milk sales in the Greater Kansas City marketing area.

Effective May 1, 1986, the Class I differential under the Greater Kansas City order was increased by 18 cents, from $1.74 to $1.92 per hundredweight. The Class I differentials under the two order markets to the north (Nebraska-Western Iowa and Iowa) were each increased by 15 cents. As a result, the Iowa Class I differential is $1.55 (up from $1.40) and the Nebraska-Western Iowa differential is $1.75 (up from $1.60). The Southern Illinois order to the east was increased by 39 cents, from $1.53 to $1.92, while the Southwest Plains order to the south was increased by 79 cents, from $1.98 to $2.77.

As a result of the change in the price relationship between the Greater Kansas City and other orders, Mid-America Dairymen, Inc. (Mid-Am), proposed that the location adjustment provisions be amended. Mid-Am proposed that a zone pricing structure be established within the marketing area. Under the proposal, the Kansas City and Missouri portions of the marketing area would be retained as the base zone in which no location adjustments would apply. Two new price zones would be established to the west of Kansas City where plus location adjustments would apply. A plus 10-cent location adjustment would apply in the first zone to the west of the base zone and would include nine counties that are in the marketing area and two counties (Osage and Franklin) that are adjacent to the marketing area. This would result in a 10-cent increase at a distributing plant in Topeka (where no adjustment currently applies) and a 20-cent increase at a Mid-Am supply plant at Ottawa (Franklin County) where a minus 10-cent adjustment currently applies. The third pricing zone, with a plus 20-cent location adjustment, would include eight southwestern counties of the marketing area. Such location adjustment would apply to a distributing plant at Junction City, where no adjustment currently applies. Mid-Am contended that the plus location adjustments in the western portion of the marketing area were intended to provide for better price alignment with competing handlers located in higher priced markets to the south who are regulated under the Southwest Plains order.

Mid-Am also proposed that the rate for determining minus location adjustments at distant plants be increased from 1.5 to 2.0 cents per 10 miles. Topeka would be eliminated as a basing point for establishing out-of-area location adjustments and the territory surrounding Kansas City, Missouri, within which no location adjustments apply would be expanded from 50 to 70 miles. Mid-Am contended that the higher rate was necessary to cover a greater portion of the hauling cost to provide an incentive to ship milk from northern supply areas to major population centers in the market for fluid use. Mid-Am testified that its proposal would maintain essentially the same location value of milk in northern supply areas that exists under the current location adjustment provisions. Specifically, Mid-Am referred to plants located at Arlington, Bremer, and Fredericksburg, Iowa which are within the Iowa procurement area of the Greater Kansas City marketing area. The Fredericksburg plant is a pool supply plant on the Kansas City market that is operated by Associated Milk Producers, Inc. (AMPI), while the other two plants are nonpool plants at which producer milk is priced under the Kansas City order.

In its brief, Mid-Am withdrew its support for the proposal to establish plus pricing zones in the Kansas portion of the marketing area. However, Mid-Am contends, that for pricing purposes the counties of Franklin and Osage should be included in the base zone. Consequently, no location adjustment would apply at Mid-Am's Ottawa supply plant, whereas a minus 10-cent adjustment currently applies at such location and a plus 10-cent adjustment would have applied under Mid-Am's original proposal.

AMPI (North Central Region) opposed Mid-Am's location adjustment proposal to increase the rate from 1.5 to 2.0 cents per 10 miles. AMPI testified that the 2.0-cent rate was in excess of a rate that is necessary to recognize the alignment of Class I differentials among markets established on May 1, 1986. AMPI testified that in view of the price relationship between the Greater Kansas City market and markets to the north (Nebraska-Western Iowa, Iowa, and Upper Midwest), a rate of 1.7 cents per 10 miles was all that was necessary

to reflect the new alignment of prices. Specifically, AMPI (North Central Region) proposed that a minus 12-cent location adjustment apply to plants outside the marketing area that are between 50 and 70 miles from the nearer basing point, with a further minus adjustment of 1.7 cents per each 10 miles beyond 70 miles from such basing point.

The National Farmers' Organization (NFO) opposed the zoning of the Kansas portion of the marketing area. NFO contended that the application of higher prices in the western part of the marketing area would disrupt the historical price relationship among the market's distributing plants. In particular, NFO contended that the distributing plant at Topeka (which NFO supplies) would be placed in a disadvantageous position relative to plants in the Kansas City area. NFO also opposed the deletion of Topeka as a basing point for establishing location adjustments at plants outside the marketing area. NFO indicated that it sometimes diverts milk to nonpool plants that are outside the marketing area and south and west of Kansas City. Thus, elimination of Topeka as a basing point would reduce the price on such diverted milk since Topeka is 66 miles west of Kansas City.

NFO supported the increase in the rate for computing location adjustments to 2.0 cents per 10 miles. NFO contended that such higher rate is necessary to provide an incentive for northern milk supplies in Iowa to be shipped to Kansas City when needed for fluid use. Moreover, NFO contended that the application of a lower rate for determining location adjustments would over-value milk at distant locations that is pooled on the market but which is not shipped to distributing plants for fluid use.

The handler operating the Topeka distributing plant also opposed the price increase that would result from Mid-Am's proposal to provide plus location adjustment zones in Kansas. The handler contended that the order's current intra-market pricing structure is providing adequate supplies of milk at all plant locations in an orderly manner. The handler also claimed that establishing plus zones in western Kansas actually would discourage milk from moving to the major population center in Kansas City.

The basis for Mid-Am's proposal (which Mid-Am has abandoned but which is supported by AMPI—Southern Region) to establish plus location adjustment zones in western Kansas is to recognize the change in the Class I differential alignment between the Greater Kansas City and Southwest Plains orders. Prior to May 1, 1986, the $1.98 Class I differential under the Southwest Plains order was 24 cents higher than the $1.74 differential under the Greater Kansas City order. In conjunction with current location adjustment provisions under both orders, the Class I differential value at Wichita under the Southwest Plains order was 6 cents above the Class I differential at distributing plants located at Topeka and Junction City under the Greater Kansas City order. However, with the Class I differentials implemented on May 1, 1986, the Southwest Plains price exceeds the Greater Kansas City price by 85 cents. In the absence of any location adjustment change, the Class I price at Wichita would exceed the Class I price at Junction City and Topeka by 67 cents. Such a price difference between competing plants represents an alignment rate of 4.8 cents per 10 miles between Topeka and Wichita (137 miles) and 5.8 cents between Junction City and Wichita (112 miles). Consequently, AMPI contends that the application of Mid-Am's Greater Kansas City proposal, in conjunction with AMPI's proposal for Southwest Plains, would moderate the substantial price change between these areas by both increasing prices in the western portion of the Greater Kansas City market and decreasing the price at Wichita under the Southwest Plains order.

Although there has been a substantial change in the price relationship between the Greater Kansas City and Southwest Plains markets, price alignment alone is not a sufficient basis for increasing prices above the level mandated by Congress in the western portion of the Greater Kansas City marketing area. Location adjustments for the Greater Kansas City market must recognize the entire structure of the market which dictates the extent to which varying location values of milk may or should be recognized. Of particular importance is the relationship of the location of the sources of producer milk relative to the population centers and plants that process the fluid milk needs of the market.

As indicated previously, the Kansas City and Topeka areas are the major population centers. Most of the distributing plants are located in or near the Kansas City area while only two are located any appreciable distance to the west of Kansas City. In addition, the marketing area represents the primary supply area for the market. The counties that represent the greatest volume of producer milk are also scattered throughout the milkshed.

As a result of the plant and supply locations, there is no indication that there are any greater distances involved for producers to supply the Junction City and Topeka plants versus the Kansas City area plants. Thus, there is no indication that there are any greater costs incurred by producers to supply the western area plants versus the Kansas City plants. Consequently, there is no basis to conclude that there is any greater economic service provided by producers, for which they should be compensated by the handler receiving the service, for supplying the western plants relative to the economic service provided in supplying plants in the Kansas City area. In addition, the application of higher prices in the western part of the marketing area would result in a price disincentive for milk to move towards Kansas City. Therefore, the proposed higher priced zones for the western portion of the marketing area must be denied.

The Steffen Dairy Company, which operates a distributing plant at Wichita, Kansas, that is regulated under the Southwest Plains order, filed exceptions to the denial of the proposed plus location adjustments for the western portion of the Greater Kansas City marketing area. Steffen is primarily concerned with the location adjustment applicable at Wichita under the Southwest Plains order (which is considered under issue 1b) and the resulting price relationship between the Wichita plant and the distributing plants located to the north at Junction City and Topeka that are regulated under the Greater Kansas City order. In the event that a lower price could not be adopted at Wichita under the Southwest Plains order, Steffen suggested that the proposed plus location adjustments for the western portion of the Greater Kansas City marketing area be reconsidered as a means to reduce the price difference between Wichita and plants to the north.

For reasons previously set forth, the structure of the Greater Kansas City market, particularly the location of the sources of producer milk relative to plant locations and the population centers of the market, does not provide a basis for establishing higher prices in the western portion of the Greater Kansas City marketing area. Consequently, the substantial change in the price relationship between the Greater Kansas City and Southwest Plains markets must be dealt with, to the extent possible, in the context of the appropriate location value of milk at Wichita under the Southwest Plains order. The location adjustment at

Wichita is considered in the following issue.

The rate used to compute location adjustments for plants located outside the marketing area should be increased from 1.5 cents to 1.7 cents. In addition, Topeka should be retained as a basing point for determining out-of-area location adjustments.

Topeka, although less populated than the Kansas City area, is a major population center in the marketing area that is 66 miles west of Kansas City, Missouri (the other basing point). To the extent that plants in distant areas (particularly those in lower-priced markets to the north) should become associated with the Greater Kansas City market, the minus location adjustments and resulting value of milk at such locations, should be based on the distance between such plants and the major population centers in the Greater Kansas City marketing area. Plants northwest of the marketing area would be nearer to Topeka while plants to the northeast would be nearer to Kansas City, Missouri. Location adjustments at distant plants should be based on the nearer basing point to reflect their proximity to the major cities where Class I prices are established to attract supplies of milk for fluid use. Removal of Topeka as a basing point would tend to ignore the importance of this major population center as a fluid market and the extent to which it is an attraction to supplies of milk for fluid use.

Neither of the rates proposed for establishing location adjustments at distant plants (1.7 and 2.0 cents per 10 miles) represents the current bulk milk hauling cost of $1.60 per loaded mile. Such hauling cost represents a rate per hundredweight per 10 miles that varies from 3.27 to 3.56 cents, depending on the weight of the milk in the tanker.

Proponents of the lower 1.7-cent rate relied on price alignment considerations while proponents of the higher 2-cent rate relied on increases in hauling costs as well as alignment considerations. Proponents of the higher rate indicate that it would represent more of the current hauling costs and thus provide a greater incentive than the lower rate for milk to be shipped to the market for fluid use. Proponents of both rates focussed on the application of their proposed rates in lower-priced markets to the north.

As previously stated, the area around Fredericksburg, Iowa, represents the most distant supply area for the market. A supply plant operated by AMPI (North Central Region) that is pooled on the market, as well as two nonpool plants at which milk is priced under the order, are located in such area. Producer milk in this Iowa area represented about 10 percent of the total producer milk on the Greater Kansas City market in November 1985. This percentage was up from about eight percent in 1984 and 1983. About half of the milk supply associated with the Fredericksburg supply plant is shipped to distributing plants regulated under the order while the other half is retained for manufacturing. Although the proportion of producers on the market from Iowa has increased, such supplies represent a relatively minor proportion of total milk supplies.

It would not appear that the use of a 2.0-cent rate, rather than a 1.7-cent rate, for establishing location adjustments would result in providing any significantly greater incentive for milk to be shipped from Iowa to distributing plants. Also, it is not clear that a greater incentive is necessary to attract this distant milk supply for fluid use. Also, application of the 2.0-cent rate would result in establishing essentially the same location value of milk in this Iowa area that exists in such area under the current location adjustments of the Greater Kansas City order. Consequently, such a rate would ignore the fact that the Class I differential under the Iowa order was increased by 15 cents on May 1, 1986. Consequently, the primary relevant factor with respect to this issue is the alignment of Class I prices among markets rather than a price incentive for shipments of milk from supply plants in distant areas.

In this regard, there is very little change in the alignment of Class I prices between the Greater Kansas City order and markets to the north that regulate distributing plants that have sales in the Greater Kansas City marketing area (Nebraska-Western Iowa and Iowa). Prior to May 1, the Greater Kansas City Class I differential exceeded the Nebraska-Western Iowa Class I differential by 14 cents. On the basis of the 163 miles between Omaha and Topeka, this price difference represented an alignment rate of less than 1 cent (.82 cent) per 10 miles. The alignment rate between Des Moines (Iowa order) and Kansas City, Missouri, was 1.7 cents per 10 miles on the basis of the 34-cent difference in Class I differentials and 192-mile distance. The current rate for establishing out-of-area location adjustments is 1.5 cents, within the range of the alignment rates that existed prior to May 1 between the Greater Kansas City market and the two nearest northern markets.

The alignment rate between Omaha and Topeka now reflects 1 cent per 10 miles since the difference in the Class I differentials between the two orders is 17 cents. Also, the alignment rate between Des Moines and Kansas City, Missouri, presently is 1.85 cents per 10 miles because of the current 37-cent Class I differential difference between the two orders. As a result, a 1.7-cent rate is more appropriate for establishing location adjustments in distant areas since it is within the range of the current alignment rates.

NFO excepted to the adoption of the 1.7-cent rate per 10 miles to establish location adjustments at distant locations and urged that the higher proposed 2.0-cent rate be adopted. NFO contends that the use of the lower rate is inconsistent with the adoption of higher rates for other markets involved in this proceeding as well as for other markets in this region of the country. In particular, NFO contends that the 2.0-cent rate adopted for the Southern Illinois order under a different proceeding should also be adopted for the Greater Kansas City order to establish similar location values of milk in northern production areas (Iowa, Minnesota and Wisconsin) where there is a considerable overlapping of procurement areas among Federal order markets. NFO also contends that the lower rate would result in over-valuing milk at distant locations, such as at Des Moines, Iowa, thereby encouraging the pooling of distant milk supplies on the Greater Kansas City market without being shipped to service the fluid milk needs of the market.

The fact that a 2.0-cent or higher 10-mile rate was adopted for computing location adjustments at distant locations under other Federal orders does not provide a basis for the use of such rate under the Greater Kansas City order. The use of a single, uniform rate for establishing location adjustments would not recognize the varying alignments of Class I prices among Federal order markets that occurred because of the varying changes in Class I differentials that were mandated by the Food Security Act of 1985. As previously stated in this decision, the mandated Class I differential alignment rates between the Greater Kansas City market and the two nearest northern markets range from 1.0 to 1.85 cents per 10 miles. Consequently, a 2.0-cent rate for establishing location adjustments would be excessive in terms of the alignment rates resulting from such mandated differentials. In addition, a 2.0-cent rate for each 10 miles would be excessive relative to applicable prices in more northern production areas in Minnesota and Wisconsin. Furthermore, the 1.7-cent rate does not result in over-valuing milk in such distant northern

production areas in terms of the mandated Class I differential alignment rates. With respect to the location value of milk at Des Moines, the 1.7-cent rate results in a Class I value that exceeds the Iowa order mandated Class I differential value by 3 cents per hundredweight, which is hardly a significant variance over the 200 miles between Des Moines and Kansas City.

As previously stated, the Greater Kansas City order establishes minus location adjustments in all directions outside the marketing area. Establishing minus location adjustments for plants located to the south to attract milk northward is somewhat in conflict with the increase in milk values from north to south. Currently, there is a minus location adjustment at a supply plant in Franklin County that is outside the marketing area to the south of the major population centers. Elimination of this minus adjustment, as proposed by Mid-Am (the cooperative association that operates the plant) would be more consistent with the increase in milk values to the south. However, this can be accomplished without placing Osage and Franklin Counties in the base zone as Mid-Am proposed. To accomplish this objective, the area around the current basing points (which is also outside the marketing area) within which no location adjustments apply should be expanded from 50 to 70 miles. Plants that are outside the marketing area, and more than 70 miles from the nearer of Topeka or Kansas City, Missouri, would have location adjustments computed on the basis of the total distance between the plant and the nearer basing point. This will result in no location adjustment being applicable at Mid-Am's southern supply plant. Also, this will result in essentially the same location adjustment at distant plants that was proposed by AMPI (North Central Region).

1b. Plant location adjustments for handers under the orders regulating the handling of milk in the Southwest Plains and Fort Smith, Arkansas marketing areas

The location adjustment provisions of the Southwest Plains order should be amended to provide for a better alignment with prices established in surrounding markets on May 1, 1986, and also to reflect a greater portion of the increase in the cost of hauling bulk milk. In view of the changes in Class I differentials in this and surrounding markets, Southwest Plains order minimum prices within the marketing area need to be increased to the south of Oklahoma City and decreased to the north, northeast, and northwest. At locations outside the marketing area, location adjustment changes are necessary to update the current procedure employed under the order to recognize the values of milk established in out-of-area locations under other Federal orders. No location adjustment changes were proposed for the Fort Smith, Arkansas order and no changes are included herein. This order is a part of a prior hearing held to consider a merger of the Southwest Plains and Fort Smith, Arkansas marketing areas, and a further expansion of the Southwest Plains marketing area to include unregulated territory in northwest Arkansas and southwest Missouri. At this time, it is only necessary that the Southwest Plains order recognize the mandated Class I differential for the Fort Smith order implemented on May 1, 1986. Such differential applies to the only plant regulated under the Fort Smith order and the location adjustment provisions of the order do not apply to any plant location. However, the mandated differential at Fort Smith is a factor in determining the location value of milk at locations north of Fort Smith that are applicable at plants in such areas that are regulated under the Southwest Plains order.

The location adjustment provisions of the Southwest Plains order date to January 1, 1983, when the Southwest Plains marketing area was formed by a consolidation of the marketing areas of four separate Federal orders and a further expansion to include intervening unregulated territory. Official notice of the final decision issued by the Assistant Secretary on October 4, 1982 (47 FR 44268) was taken at the hearing. Basically, the pricing structure for the merged and expanded marketing area reflected the pricing structure and price levels that existed under the separate orders, with minor modifications, that previously regulated the handlers operating plants that would become regulated under the new order.

For pricing purposes, the Southwest Plains marketing area is divided into six pricing zones. Zone I includes Oklahoma City and represents the market's largest population concentration. There are no adjustments to Class I and blend prices at plants in Zone 1 which contains 19 counties in central Oklahoma extending east from Oklahoma City to the Arkansas state boundary. There are currently six distributing plants located in this zone, as well as a cooperative association manufacturing plant, that are pooled under the order. Five of these plants are located in Oklahoma City, one in Norman (Cleveland County) and one in El Reno (Canadian County).

Zone II includes 33 Oklahoma counties located south and west of Zone I, including the panhandle area. There is a plus 7-cent adjustment for such zone although there are no longer any pool plants in the area. Zone III includes 25 Oklahoma counties located north of Zone I, where a minus 10-cent location adjustment applies. There are three distributing plants and one manufacturing plant located in Zone III that are pooled under the order. The manufacturing plant and one distributing plant are located in Tulsa, while the other two distributing plants are located at Ponca City (Kay County) and Enid (Garfield County). Both Ponca City and Tulsa are basing points for determining location adjustments at plants that are substantial distances from the marketing area. Both cities are just over 100 miles from Oklahoma City, although Ponca City is due north while Tulsa is northeast of Oklahoma City.

Zone IV, which is north of Zone III, contains four Missouri counties and nine southeastern Kansas counties. A minus 33-cent location adjustment applies at the one distributing plant in the zone that is located at Pittsburg, Kansas (Crawford County).

Zone V contains 22 south central Kansas counties located north of Zone III and west of Zone IV. Wichita, which is straight north of Ponca City, is the major population center in the area. Four distributing plants and one manufacturing plant that are pooled under the order are located in the area. Two of the distributing plants are located in Wichita (Sedgwick County), one at El Dorado (Butler County) and one at Hutchinson (Reno County). The manufacturing plant is located at Hillsboro (Marion County). A minus 18-cent location adjustment applies at plants in this area.

Zone VI is located west of Zone V and contains 21 southwestern Kansas counties. A minus 13-cent location adjustment applies although there are no longer any pool plants in the area.

The current in-area pricing structure provides for increasing prices to the south and west of Oklahoma City in recognition of increasing values of milk in such directions under Federal orders regulating the handling of milk in Texas as well as under the former Red River Valley order, the Oklahoma portion of which is included in the Southwest Plains marketing area. Prices decrease to the north of Oklahoma City in recognition of lower milk values that existed under the separate orders whose marketing areas are now a part of the Southwest Plains marketing area. However, in this northern area, prices

also increase from east to west across southern Kansas.

The Southwest Plains order also establishes specific location adjustments for plants located in areas that surround the marketing area. In effect, the order establishes pricing zones in most of the territory in seven states (Arkansas, Louisiana, Texas, New Mexico, Colorado, Kansas, and Missouri) that surround the marketing area. The specified location adjustments (both plus and minus) are intended to result in the same location value of milk that exists in such areas under other Federal orders that regulate plants in surrounding areas. This procedure, which was adopted when the Southwest Plains order was first issued, is based on the concept that, for the most part, prices in these surrounding states were established under Federal order public hearing procedures as the minimum price levels necessary to bring forth adequate supplies of milk to specific locations. Consequently, in the event that any plants in these surrounding states became associated with the Southwest Plains order, a price change should not result because of a change in regulation.

The out-of-area locations that are particularly relevant with respect to this proceeding are those adjustments that apply in territory in Arkansas and Missouri that is adjacent to the Southwest Plains marketing area. Currently, the order provides for no adjustments in the Fort Smith, Arkansas area since the Class I differentials prior to May 1, 1986, at Fort Smith and Oklahoma City were almost the same. In the Fayetteville, Arkansas and Springfield, Missouri areas the order provides for minus location adjustments of 21 cents and 38 cents, respectively. Such adjustments resulted in the same location value of milk in such areas that existed under the former St. Louis-Ozarks order that was terminated effective April 1, 1985. Plants in these areas that were regulated under the St. Louis-Ozarks order have become regulated under the Southwest Plains order. Currently, in northwest Arkansas, there is a distributing plant at Fayetteville (Washington County), a supply plant at Bentonville and a cooperative-operated plant at Siloam Springs (both in Benton County) that are pooled under the order. In southwest Missouri, there are two distributing plants at Springfield (Greene County), a cooperative-operated plant at Lebanon (Laclede County) and a supply plant at Marshfield (Webster County) that are pooled under the order.

For purposes of illustration, the Class I differential values that existed under the Southwest Plains order prior to May 1 in each of the pricing zones, as well as the adjacent Arkansas and Missouri areas, with current location adjustments are shown on the following table. Also indicated are the Class I differentials that have existed in each zone since May 1, 1986, with current location adjustments. Also, for comparison purposes, the Class I differential values adopted herein are included. The principal cities for each of the zones are also indicated as a reference point although the composition of Zones II and III have been modified.

[Dollars per hundredweight]

Zone	Cities	Class I Differentials		
		Prior to May 1	Since May 1	Adopted
I	Oklahoma City	1.98	2.77	2.77
II	Lawton	2.05	2.84	3.00
III	Ponca City/Tulsa	1.88	2.67	2.59
IV	Joplin/Independence	1.65	2.44	2.30
V	Wichita	1.80	2.59	2.30
VI	Garden City	1.85	2.64	2.50
	Fort Smith	1.98	2.77	2.77
	Fayetteville	1.77	2.56	2.55
	Springfield	1.60	2.39	2.19

For plants that are located outside the marketing area and beyond the territory within which specific location adjustments apply, Class I and blend prices are reduced at the rate of 1.5 cents for each 10 miles distance from the nearer of Ponca City or Tulsa, Oklahoma. Since specific location adjustments are established for most of the territory surrounding the marketing area, Nebraska is the nearest northern location in which such rate for determining location adjustments would apply. Such rate for establishing minus location adjustments applies in all directions where specific adjustments are not established, except for locations in the State of Texas. For southwest Texas locations that are not included in any Federal order marketing area, plus location adjustments are established at the rate of 1.5 cents per 10 miles from Oklahoma City.

The Oklahoma City and Tulsa areas represent the largest population centers in the marketing area. Oklahoma County (Zone I) and Tulsa County (Zone III) combined represent about one-third of the Oklahoma population. Cleveland County, which is also in Zone I adjacent to Oklahoma County, is the third most populated county in Oklahoma with a population in excess of 100,000. Comanche County (Lawton area), which is in Zone II southwest of Oklahoma City, is the fourth most populated county in Oklahoma that contains in excess of 100,000 people. The other major population center in the marketing area is Wichita, Kansas (Sedgwick County). This is the third most populated county in the marketing area, ranked behind Tulsa and Oklahoma counties.

Of the 133 counties in the marketing area, only the five previously mentioned have populations in excess of 100,000. These counties represent about 39 percent of the total population in the marketing area, indicating that a substantial proportion of the population is scattered throughout the marketing area. Two other relatively heavily populated areas outside the marketing area within which Southwest Plains order pool distributing plants are located are the Springfield, Missouri (Greene County) and Fayetteville, Arkansas (Washington County) areas.

The volume of producer milk associated with the Southwest Plains order is more than adequate to meet the fluid milk needs of the market. The current supply/demand relationship of the market is depicted by the time period since April 1, 1985, when the adjacent St. Louis-Ozarks order was terminated. Since that time the volume of producer milk under the order has about doubled as additional fluid milk plants, and milk supplies associated with such plants, became regulated under the Southwest Plains order. For April-December 1985, receipts of milk from producers averaged more than 230 million pounds per month. Only about 48 percent of such receipts was used for Class I purposes by handlers regulated under the order.

The sources of producer milk for the market originate at dairy farms located in the states of Arkansas, Kansas, Louisiana, Mississippi, Missouri, Nebraska, New Mexico, Oklahoma, and Texas. However, the primary sources of supply are Missouri (45 percent), Oklahoma (28 percent), and Kansas (21 percent), which represent about 94 percent of the total producer milk on the market. About five percent of the producer milk originates in Arkansas while the remaining states account for about one percent.

The southwest Missouri area around Springfield represents the heaviest milk producing area for the Southwest Plains market as eight of the top 10 milk producing counties are located in this area. The remaining two top producing counties are Grady County, Oklahoma (which is in Zone I south of Oklahoma City) and Sedgwick County, Kansas (which is the Wichita area in Zone V). Combined, these 10 counties represented 39.5 percent of the total

producer milk on the market in November 1985. The next 10 leading counties in terms of producer receipts represented about 16 percent of the total producer milk on the market. Three of these counties are also located in the Springfield area while two are located around the Fayetteville, Arkansas area. Three of these counties are located in Zone III around Tulsa while the remaining two are in Zone V around Wichita. In total, the top 20 counties accounted for almost 56 percent of total producer milk with the remainder being scattered throughout the marketing area.

Fluid milk needs of the market are also supplied by handlers who operate plants that are regulated under other Federal order markets. For the fourth quarter of 1985, 18 distributing plants regulated under seven different orders distributed fluid milk products in the Southwest Plains marketing area. Such sales represented 7.8 percent of the total fluid milk sales in the market area. Effective May 1, 1986, the Class I differentials for the Federal orders that regulate the plants with sales in the marketing areas increased by varying amounts, ranging from 15 to 96 cents. For the orders involved, the Class I differential increases were: Nebraska-Western Iowa, 15 cents; Greater Kansas City, 18 cents; Texas Panhandle, 24 cents; Southern Illinois, 39 cents; Southwest Plains, 79 cents; Fort Smith, Arkansas, 82 cents; Central Arkansas, 83 cents; and Texas, 96 cents.

Because of the change in the relationship of the Class I differentials between the Southwest Plains order and other surrounding Federal order markets, four proposals to amend the location adjustment provisions of the Southwest Plains order were received and included in the hearing notice. One proposal covered the entire scope of the current location adjustment provisions with modifications to the adjustments at all locations inside and outside the marketing area. The other three proposals concerned location adjustments at two specific locations, namely, Springfield, Missouri and Wichita, Kansas.

AMPI and Mid-Am, which represent a substantial majority of the producers who supply the market, jointly proposed that all location adjustments be revised in light of the 79-cent increase in the Class I differential mandated by the Food Security Act. The current and proposed location adjustments for the marketing area and territory in Arkansas and Missouri that was previously proposed to be added to the Southwest Plains marketing area, and net Class I differential changes at such locations are indicated in the following table. The proposed Class I differential value for each of the areas is also indicated.

Zone	Cities	Location adjustments		Net class I diff. increase	Proposed diff. (dollars)
		Current	Proposed (cents)		
I	Oklahoma City	0	0	79	2.77
II	Lawton	+7	+23	95	3.00
III	Ponca City/Tulsa	−10	−18	71	2.59
IV	Joplin/Independence	−33	−47	65	2.30
V	Wichita	−18	−42	55	2.35
VI	Garden City	−13	−27	65	2.50
	Fort Smith	0	0	82	2.77
	Fayetteville	−21	−22	78	2.55
	Springfield	−38	−47	70	2.30

In addition, AMPI and Mid-Am proposed that the composition of three of the zones be modified. The cooperatives proposed that the western and northwestern counties be removed from Zone II and be included in Zone III, and that Lincoln County be removed from Zone III and be included in Zone I.

The cooperatives testified that no location adjustment should apply in Zone I or in the Fort Smith, Arkansas area under the Southwest Plains order to reflect the east-west alignment of the $2.77 Class I differential mandated by the Food Security Act. In addition, they contended that Lincoln County should be added to Zone 1 because a new distributing plant is being constructed at Chandler, Oklahoma. The cooperatives contended that the new Farm Fresh plant, which is to be a replacement for the current plant at Ponca City, should be included in Zone I since it is only about 15 miles from the boundary of Oklahoma County. As such, the cooperatives contend that the price at the new plant should be the same as the price that applies at other nearby plants with which the Chandler plant will compete for fluid milk sales. Also, the cooperatives testified that the new plant location is further from supply areas than the Ponca City plant and that it would cost more than an additional 18 cents to supply the new location.

With respect to southern Oklahoma counties that would remain in Zone II, the cooperatives testified that the plus location adjustment should be increased from 7 cents to 23 cents. They contend that the increase is necessary to recognize the difference between the Class I differentials under the Southwest Plains and Texas orders effective May 1, 1986 (51 cents) compared to a 34-cent difference prior to May 1. They also testified that the removal of the western and northwestern counties from Zone II and their inclusion in Zone III is necessary because of the alignment changes between the Southwest Plains and Texas Panhandle orders. Prior to May 1, the Class I differential under the Texas Panhandle order exceeded the Southwest Plains differential by 27 cents, whereas since May 1, the Texas Panhandle differential is 28 cents less than the Southwest Plains differential. Consequently, the cooperatives proposed that a minus 18-cent location adjustment apply in such area to recognize the lower value of milk under the Texas Panhandle order. Also, in the Zone III area north of Zone I, the cooperatives testified that the proposed minus 18-cent adjustment was reasonable in terms of the distances between Oklahoma City and distributing plants located at Tulsa, Ponca City and Enid, Oklahoma and a 2.2-cent alignment rate.

The cooperatives contend that the proposed increases in the minus adjustments for Zones IV, V, and VI to 47, 42, and 27 cents, respectively, are necessary to align prices between the Southwest Plains and Greater Kansas City orders. They testified that such adjustments were necessary to spread the 85-cent difference between the mandated Class I differentials for the two orders over the 344 miles between Kansas City and Oklahoma City, an alignment rate of about 2.40 cents per 10 miles.

For the Fayetteville, Arkansas area, the cooperatives proposed that a minus 22-cent location adjustment ($2.55 differential value) apply, but offered no explanation for the one-cent change from the current location adjustment. In the Springfield, Missouri area the cooperatives testified that the minus 47-cent location adjustment ($2.30 differential value) was appropriate in view of Class I differentials mandated at surrounding cities. The cooperatives used an alignment rate of 2.0 cents per 10 miles between Springfield and six cities (Kansas City, St. Louis, Tulsa, Oklahoma City, Fort Smith, and Little Rock) and averaged the six differentials.

For other locations outside the marketing area the cooperatives proposed specific location adjustments for groups of counties to reflect under the Southwest Plains order the same Class I prices established in such counties under other Federal orders. For more distant locations beyond which specific adjustments do not currently apply, the cooperatives proposed that the rate for computing location adjustments be increased from 1.5 cents to 2.25 cents per 10 miles. For all plant locations, except Texas, the adjustments would be negative and based on the distance between the plant and the nearer of Ponca City or Tulsa, as is currently provided under the order. For Texas locations outside any Federal order marketing area, the adjustment would be plus and based on the distance between plants and Oklahoma City, as is currently provided.

Prairie Farms Dairy, Inc., a cooperative association that jointly operates a fluid milk plant at Springfield, Missouri with Mid-Am, proposed that the resulting Class I differential value in the Springfield area should be the same as the Class I differential at Kansas City, Missouri or St. Louis, Missouri, whichever is higher. (The mandated Class I differential at Kansas City is $1.92 while the differential at St. Louis is $1.99 under current Southern Illinois order provisions, but proposed to be $2.01 under another proceeding.) Prairie Farms testified that such lower differential at Springfield is necessary to reflect the historic alignment of pricing among Springfield, Kansas City and St. Louis and to continue to recognize the substantial volume of milk that is produced in southwest Missouri. Prairie Farms testified that the Missouri production area had long been recognized by the Federal order pricing structure whereby the Class I differential at Springfield was the same as the differential at St. Louis and was 14 cents less than the differential at Kansas City.

Mid-Am, which offered additional testimony in support of the AMPI/Mid-Am proposal, contended that a price as low as that proposed by Prairie Farms was no longer necessary in the Springfield area since such supplies have a growing association with markets to the south. Mid-Am also contended that there are sufficient supplies of milk located to the north of Kansas City and St. Louis that can be relied upon for fluid milk needs in those consumption centers. AMPI also testified that a Class I differential of $1.99 at Springfield would produce chaos in markets in all directions. AMPI noted that a $1.99 differential at Springfield would result in an alignment rate in excess of 4.4 cents per 10 miles between Springfield and the mandated $2.77 Class I differential at Fort Smith.

Mid-Am and Prairie Farms altered their positions and filed a joint brief supporting a $2.19 Class I differential at Springfield. The basis for such differential (a minus 58-cent location adjustment) was not specified.

Foremost Dairies, Inc., which operates a pool distributing plant at Springfield, opposed the AMPI/Mid-Am proposal and supported the testimony and proposal submitted by Prairie Farms. Foremost contends that recognition must continue to be given to the surplus milk production available in the Springfield area that was provided for under the pricing structure that existed prior to May 1, 1986. In its brief, Foremost indicates that a Class I differential of $2.12 at Springfield would be less inequitable and would reflect the 2.25-cent rate proposed by AMPI/Mid-Am for out-of-area location adjustments and the mileage between Springfield and Oklahoma City.

The National Farmers Organization (NFO) opposed both the AMPI/Mid-Am and Prairie Farms proposed location adjustments for the Springfield area. NFO, which does not represent producers on the Southwest Plains market, but which represents producers in southwest Missouri who supply the Southern Illinois market, suggested that a middle of the road approach needs to be taken to balance producer and handler interests in the Springfield area. NFO suggested that a $2.12 differential value at Springfield would accomplish such an objective and is based on the 2.25-cent proposed out-of-area rate and the mileage between Oklahoma City and Springfield.

NFO also suggested modifications to the AMPI/Mid-Am proposed location adjustments at Fayetteville and Zones IV and V of the marketing area. At Fayetteville NFO suggested a $2.43 Class I differential (34-cent location adjustment). NFO testified that such a location adjustment would provide for east-west alignment of pricing in northern Arkansas as such price was proposed by Foremost to apply at Paragould, Arkansas under the Central Arkansas order. In Zones IV and V of the marketing area, NFO suggested Class I differentials of $2.17 and $2.32, respectively. Such pricing would result in maintaining the same east to west alignment from Springfield to Wichita that exists under the current Southwest Plains order. NFO contends that the intra-market east-west alignment (Zone IV exceeds Springfield by 5 cents and Zone V exceeds Springfield by 20 cents) should not be disturbed.

Two handlers that operate distributing plants in Zone V proposed greater minus location adjustments for such area than proposed by AMPI/Mid-Am. Jackson Ice Cream Co., whose plant is located at Hutchinson, proposed that a 60-cent location adjustment ($2.17 differential value) be established for Zone V. The handler testified that such adjustment was necessary to better align prices between the handler's plant and plants that are regulated under the Greater Kansas City order. The handler testified that most of the stores supplied by the Hutchinson plant are in the direction of Kansas City in competition with sales by distributing plants from the Kansas City area.

Prior to May 1, 1986, the Class I price in Zone V exceeded the Kansas City price by 6 cents. Since May 1, absent a location adjustment change under the Southwest Plains order, the Zone V Class I price exceeds the Kansas City price by 67 cents. Consequently, Jackson contends that a 60-cent location adjustment, which would provide for a 25-cent price difference between Kansas City and Hutchinson, is necessary to maintain some reasonable minimum order price competition between the two areas.

Steffen Dairy Co., whose plant is at Wichita, proposed that a 78-cent location adjustment apply in Zone V. Such an adjustment would result in virtually no change in the price relationship between Kansas City and Wichita as a result of the change in the Class I differentials effective May 1, 1986. At the hearing, and in its brief, Steffen indicated that at least a 55-cent location adjustment for Zone V ($2.22 differential value) was justified on the basis of a 3.5-cent rate applicable to the cost of hauling bulk milk. In addition, Steffen testified that most of the plants sales of fluid milk products are made in competition with other plants where lower prices apply rather than with plants to the south where higher prices apply.

Both Steffen and Jackson testified that the AMPI/Mid-Am proposal does not provide a price in Zone V that is low enough to recognize the supplies of milk that are available in the immediate area, and that the price need not be as high as the cooperatives proposed to attract milk supplies to Zone V plants. Also, in its brief Steffen indicated that the AMPI/Mid-Am proposal merely splits the 85-cent mandated price spread between the Greater Kansas City and

Southwest Plains orders at Wichita, thus assuming that marketing conditions between Oklahoma City and Wichita are the same as between Kansas City and Wichita. Steffen points out that under the cooperatives' proposal, 49 percent (42 cents) of the 85-cent difference is reflected between Oklahoma City and Wichita while 51 percent (43 cents) is covered between Wichita and Kansas City. Prior to May 1, 1986, 25 percent of the 24-cent difference in the differentials between the orders was reflected between Kansas City and Wichita (6 cents) and 75 percent of the spread was reflected between Wichita and Oklahoma City (18 cents).

Farm Fresh, Inc., which is building a new distributing plant at Chandler, Oklahoma (Lincoln County) to replace its plant at Ponca City, opposed the removal of Lincoln County from Zone III and its inclusion in Zone I. The handler contends that the rezoning of Lincoln County has nothing to do with the stated primary purpose of the hearing to consider location adjustment changes to conform with the Class I differentials mandated by the Food Security Act of 1985. The handler further contends that the rezoning issue was buried within the proposed pricing changes for the order and, as a result, was not known by Farm Fresh in sufficient time for the handler to adequately prepare for the hearing. Since the summary of the purpose of the hearing did not specify the proposed rezoning, Farm Fresh contends that the issue was not properly noticed for hearing. Farm Fresh further contends that the rezoning proposal cannot be adopted without the preparation of a regulatory flexibility analysis indicating the impact of the rule on a small business. In addition, Farm Fresh contends that the record would not support the rezoning since Lincoln County is a relatively heavy milk producing area and further, that Chandler is no farther from supplies of milk in southwest Missouri than is Ponca City.

Effective May 1, 1986, the Class I differentials for the Southwest Plains and Fort Smith, Arkansas orders were increased by 79 cents and 82 cents, respectively, to $2.77. Such differential applies to plants in Zone I of the Southwest Plains order as well as to the only plant regulated under the Fort Smith, Arkansas order. No location adjustments apply at plants in Zone I since it contains the major population center in the market and is the focal point for pricing adjustments at all other areas under the order. Also, no location adjustment should apply at Fort Smith under the Southwest Plains order to recognize the mandated Class I differential at that location.

Lincoln County should be removed from Zone III and be included in Zone I as proposed by AMPI/Mid-Am. Such action was supported by a handler who operates a distributing plant in Zone I at Norman (Cleveland County). The handler supported the proposal because of the proximity of Chandler (where the new distributing plant is being constructed) to the Oklahoma City area and other plants in the area that serve the major population center.

Farm Fresh contends that Lincoln County should remain in Zone III (where a minus 18-cent location adjustment would apply) because: (1) Chandler is 45 miles from Oklahoma City; (2) Farm Fresh's principal competitors are located at Tulsa in Zone III; and (3) the new plant at Chandler is no farther from southwest Missouri supply areas than the current plant at Ponca City. Such factors are not controlling in determining the appropriate zone in which Lincoln County should be included.

Under a zone pricing arrangement, location adjustments are not established on the precise location of each and every plant. Prices are established at major city locations with the territory being expanded to include additional counties in the proximity of the population center within which additional plants may be located. Within such zone the same prices apply to all plants that would be expected to compete with each other, both in terms of fluid milk sales in the major population center, and in the procurement of supplies of milk. For example, Zone I includes the major population centers around Oklahoma City. However, in total Zone I includes a band of 19 central Oklahoma counties that extends from Caddo County on the west to the Arkansas border on the east. Such zone, in addition to recognizing the major population center, recognizes the location value of milk in central Oklahoma that is identical on an east-west axis from Fort Smith to Oklahoma City. In contrast, the focal point for pricing in Zone III is Tulsa, the major population center. A minus location adjustment applies at Tulsa and 25 north and northeastern counties because such counties are relatively nearer to supplies of milk in southwest Missouri and southern Kansas than Oklahoma City and the counties in Zone I.

Because of its proximity to Oklahoma City and the $2.77 Class I differential value of milk across central Oklahoma, Lincoln County is much more closely associated with the value of milk in Zone I than with the value of milk at Tulsa in Zone III. Lincoln County is adjacent to Oklahoma County and most of the territory in the County (including Chandler) is south of the north border of Oklahoma County. Chandler is about 15 miles east of the Oklahoma County border and about the same distance north of the east-west price line mandated by the Food Security Act of 1985. In such a situation, it would be unreasonable for a minus 18-cent location adjustment to apply at Chandler, as was proposed for the more northeastern population center at Tulsa, since the primary competitors of the new plant in terms of both sales and procurement would be other plants in the Zone I area.

In terms of procurement of raw milk supplies, the Chandler plant is much further south of milk supplies in Kansas than the current plant at Ponca City. Also, the Chandler plant is further from the heavy southwest Missouri supply area than plants in the Tulsa area. The fact that Lincoln County is the third largest milk producing county in Oklahoma (3.5 to 4 million pounds of milk per month) is not a factor that requires a minus 18-cent location adjustment in such county. Lincoln County supplies, which are available to any number of plants, cannot possibly satisfy the fluid milk requirements of the major population center. Additional supplies must be obtained from northern and northeastern supply areas. Obviously, by the submission of their proposal, AMPI and Mid-Am (which are major suppliers of Farm Fresh) would not prefer to make supplies available to the Chandler location at a price less than the price that applies in the adjacent Oklahoma County because greater costs would be incurred in supplying the new plant. In fact, the cooperatives testified that it would cost more than an additional 18 cents to supply the plant at its new location. This indicates that the location value of milk at Chandler is essentially the same as for other current Zone 1 locations, and is in excess of the value of milk at plants in Zone III that are nearer to the primary sources of supply for the market.

Farm Fresh, which is now the largest distributing plant in Oklahoma, is considered to be a small business. Virtually all other fluid milk plants, and the producers who supply such plants, are also considered to be small businesses. While the inclusion of Lincoln County in Zone I may have an impact on Farm Fresh, the primary consideration is the establishment of uniform prices at similarly situated

handler plants as required by the Agricultural Marketing Agreement Act of 1937, as amended. As indicated by Farm Fresh, the decision to build a new plant at Chandler was based in part on the reduction in costs to supply the fluid milk needs of the major population center. The minimum order price should be the same at Chandler as at other similarly located plants that serve the Oklahoma City area and which also will compete with Farm Fresh for a source of supply. Also, the higher price will partially offset the extra costs incurred by producers to supply the new plant relative to supplying plants that are nearer to the principal sources of supply in southwestern Missouri and southern Kansas.

The notice scheduling the hearing indicated that the purpose of the hearing was to consider proposals to amend seven different milk orders and the proponents indicated the proposals were designed to change location adjustment provisions to conform with Class I differentials mandated by the Food Security Act of 1985. The major impetus for the hearing was the change in Class I differentials, as indicated in the summary of the hearing. It is not possible to indicate in a short summary of the purpose of the hearing all the zoning and price changes for specific plant locations that were proposed by amending location adjustment provisions. All of the specific proposals for the various orders were set forth in the hearing notice as required for review by interested parties. Farm Fresh, a handler who has long been regulated under the Southwest Plains order, would certainly have an interest in proposed pricing changes at either the new or current plant location. It is the responsibility of affected parties, such as Farm Fresh, to determine if and how the specific proposals would affect prices at various locations, rather than depend on a summary of potential changes prepared by another party. Although the rezoning of Lincoln County was not the major impetus for the hearing, consideration of the issue was both timely and relevant in terms of the inter and intra-market price adjustments that might be required as a result of the Class I differential changes. Although more time to prepare may have been desired, Farm Fresh participated at the hearing, both through direct testimony and cross-examination of other witnesses, and filed a brief. All of the issues relevant to a determination of the appropriate zoning of Lincoln County were fully explored on the record of the proceeding.

Farm Fresh excepted to the inclusion of Lincoln County in Zone I. Farm Fresh contends that such action: (1) would disrupt historical price relationships since Lincoln County has been included in Zone III for many years; (2) would establish a price to Farm Fresh that is in excess of the price applicable to primary competitors in Zones III and V; (3) cannot be justified on the basis of the proximity of milk supplies since the Chandler plant is 25 miles closer to the market's major milk supply area than the current Ponca City plant; (4) is based on speculation that supplies of milk would not be made available to Chandler at the Zone III price; (5) does not address the impact of the price change on a small business as required by the Regulatory Flexibility Act; and (6) was not adequately noticed for hearing.

As previously stated in this decision, the issue of the appropriate location adjustment for Lincoln County centers on whether the location value of milk delivered to Chandler is more closely associated with the value of milk in Zone I or Zone III. The issue is relevant since the replacement of the Ponca City plant with a new plant that is under construction at Chandler reflects a significant new development in marketing conditions under the Southwest Plains order. Since no milk has been priced at the Chandler location in the past, there has been no historical price relationship between Chandler and plants at any other location in the market.

The inclusion of Lincoln County in Zone I will increase the cost to Farm Fresh at Chandler by 18 cents relative to the Ponca City plant and other plants in Zone III at Enid and Tulsa, Oklahoma. Whether these plants or other plants in Oklahoma City are the primary competitors of Farm Fresh in the distribution of fluid milk products is not a particularly relevant consideration. Also, whether Farm Fresh distributes most of its fluid milk products in the major Oklahoma City population area or in areas to the north is not relevant. Even if all the fluid milk sales by Farm Fresh were made in northern areas in competition with plants at which lower prices apply, it would not have a bearing on the value of milk delivered to the plant at Chandler. The primary consideration is whether the costs incurred in supplying the Chandler plant with milk from the major production areas of the market are more closely associated with the value of milk in Zone I or with the lower value of milk delivered to plants in Zone III that are nearer to the major production areas of the market.

In this regard, Chandler is substantially further south from the southern Kansas supply area than the current Ponca City plant or other distributing plants in Zone III (Enid and Tulsa). Chandler is about 100 miles further from this supply area than Ponca City. Consequently, greater costs would be incurred to supply milk to the Chandler location than to the Ponca City or other Zone III locations from southern Kansas.

With respect to the major production area in southwestern Missouri, the claim by Farm Fresh that Chandler is 25 miles closer to such area than Ponca City is not supported by testimony of the specific southwestern Missouri locations involved. Although the testimony of cooperative associations likewise does not provide specific locations, a review of the Household Goods Carriers' Bureau Mileage Guide 13 (of which official notice was taken at the hearing) supports the conclusion that Chandler and Ponca City are about the same distance from this major production area. However, the relevant mileage comparison with respect to supplies of milk in southwest Missouri is with Tulsa, not Ponca City. In this regard, Chandler is about 60 miles further from the southwestern Missouri production area than is Tulsa. This indicates that the value of milk delivered to Chandler is greater than the value of milk delivered to Tulsa. If prices were the same at Tulsa and Chandler, there would be no economic incentive under the order for producers to incur the additional costs involved to supply the Chandler location, versus Tulsa, from the southwestern Missouri production area.

The foregoing lends considerable support to the testimony of cooperative associations that it would cost more than the additional 18 cents to supply Farm Fresh at its new plant location at Chandler. Because of the distances involved, milk originating in both the major southwestern Missouri and southern Kansas production areas has a greater value delivered to Chandler than to other Zone III locations at Tulsa, Enid or Ponca City. The producers who supply the Chandler plant will provide a greater economic service to Farm Fresh than the service provided in supplying other plants in Zone III that are nearer the primary production areas of the market, and should be compensated accordingly. Consequently, all relevant factors involved, rather than speculation, indicate that Lincoln County should be included in Zone I.

The inclusion of Lincoln County in Zone I will not have a significant

economic impact on Farm Fresh. The 18-cent increase at Chandler represents less than 1.4 percent of the minimum order Class I price applicable at the handler's Ponca City plant during 1985. Furthermore, even if there were a substantial price increase at Chandler, there would be no basis under the Agricultural Marketing Agreement Act of 1937, as amended, to establish a different price for Farm Fresh because of a size comparison between Farm Fresh and other handlers. Such Act requires that prices be uniform among similarly located handlers. Also, it would not appear that any further regulatory flexibility analysis of the impact on Farm Fresh would be required since the promulgation of Agency rules involving prices are exempt from the Regulatory Flexibility Act. This is specified in section 601(2) of the Regulatory Flexibility Act which states " . . . that the term 'rule' does not include a rule of particular applicability relating to . . . prices. . . . "

With respect to other procedural issues involved, Farm Fresh raised no issues relating to the adequacy of the notice of hearing that were not previously considered in this decision. For all of the foregoing reasons, Lincoln County should be included in Zone I.

Adjustments to the Zone I price to reflect the value of milk at other locations are necessary because of the changes in the price relationships between the Southwest Plains and other Federal order markets. The price alignment issue is particularly acute with respect to northern and northeastern areas, particularly Wichita and Springfield, where the greatest controversy exists over the location adjustments that should apply at such locations under the order. At all other locations there was either no opposition to the location adjustments proposed by AMPI/Mid-Am, or at least a much narrower range between what was proposed and suggested modifications to such proposal. For northern areas, the price adjustment should reflect, to the extent possible, the market structure set forth previously and the cost of hauling milk from where it is produced to the principal population centers where it is needed for use in fluid milk products. To the south and west of Zone I, the location adjustments are primarily an alignment issue.

Zone II should be redefined as proposed by AMPI/Mid-Am to include only those southern Oklahoma counties that are located between Zone I and Texas. The plus location adjustment should also be increased from 7 cents to 23 cents, resulting in a Class I differential value of $3.00. There was no opposition to this proposed location adjustment change and there are no longer any pool plants in the area. The location adjustment increase reflects the increase in the difference between the Class I differentials under the Southwest Plains and Texas orders since May 1, 1986.

Prior to May 1, the Texas order differential ($2.32) exceeded the Southwest Plains order differential ($1.98) by 34 cents. This difference reflected an alignment rate of about 1.6 cents per 10 miles over the distance between Oklahoma City and Dallas. Since May 1, the difference in the differentials between the two orders is 51 cents, reflecting an alignment rate of about 2.4 cents per 10 miles. Because of the increase in the differential difference between the two orders, a 23-cent location adjustment represents an appropriate value of milk in southern Oklahoma territory that is approximately halfway between Dallas and Oklahoma City.

The current western counties in Zone II (including the panhandle area) should be included in Zone III with a minus 18-cent location adjustment. There was no opposition to such proposal and there are no longer any pool plants in this area. This change is necessary because of the substantial price alignment change between the Southwest Plains and Texas Panhandle orders. Prior to May 1, the Class I differential under the Texas Panhandle order ($2.25) exceeded the Southwest Plains differential by 27 cents. Since May 1, the Texas Panhandle differential has been 28 cents less than the Southwest Plains differential. Consequently, a minus 18-cent location adjustment, rather than a plus 7-cent adjustment, will recognize the declining value of milk to the west of Oklahoma City mandated by the Food Security Act of 1985.

As indicated previously, location adjustments to the north and northeast of Oklahoma City are more critical than those just discussed, both in terms of price alignment with other markets and in terms of the structure of the Southwest Plains market. The primary structural consideration is the dependence upon northern milk supplies, particularly those in southwest Missouri, to meet the fluid milk needs of the major population centers of the market, namely, Oklahoma City, Tulsa, and Wichita.

Proponents of various location adjustments relied upon various alignment rates ranging from 2.0 to 3.5 cents per 10 miles. However, since location adjustments are intended to reflect the cost of hauling bulk milk from where it is produced to where it is needed, the rate used to calculate location adjustments should reflect hauling costs. Producers who supply milk to distant plants incur a greater hauling cost than producers who supply relatively nearby plants. Thus, location adjustments that reflect the cost of hauling bulk milk compensate producers for the varying degrees of service they provide to handlers by supplying milk to different locations.

In this regard, a number of witnesses testifying with respect to the Southwest Plains and other orders involved in the proceeding indicated that $1.60 per loaded mile represents the current cost of hauling bulk milk. Such cost represents a rate per 10 miles that varies from 3.27 to 3.56 per hundredweight, depending on the weight of the load. However, a conservative rate, rather than an actual rate, should be used for location adjustments to encourage hauling efficiencies and minimize the potential of exceeding actual costs. If location adjustments were based on a rate sufficiently in excess of costs, significant economic incentives could be created to move milk to obtain hauling profits rather than for the purpose of supplying fluid milk needs. Also, some concern was expressed with respect to declines in fuel costs which might not be reflected in hauling costs. Consequently, a rate of 3 cents per 10 miles should be used as a conservative hauling rate to reflect the varying values of milk and to align prices between Zone I and zones to the north and northeast. It is noted that the use of such rate is constrained somewhat by the scope of the proposals as well as by the proximity of certain plants to Fort Smith, which has a mandated differential.

The Zone III location adjustment proposed for the counties north of Zone I is minus 18 cents, compared to minus 10 cents currently. There was no opposition to the proposed adjustment and it was supported by handlers who operate plants in the area in briefs. Tulsa is the major population center in the zone. Also, Tulsa and Ponca City are basing points for determining location adjustments at plants that are substantial distances from the marketing area. Historically, prices have been the same at both cities since both are approximately the same distance from Oklahoma City.

Tulsa is 105 miles northeast of Oklahoma City and the minus 18-cent proposed adjustment represents an alignment rate of about 1.6 cents per 10 miles. However, recognizing only the northward direction, the adjustment

represents a rate of about 3 cents per 10 miles from the mandated price line that extends from Oklahoma City to Fort Smith. In addition, such price represents an alignment rate of about 3 cents between Tulsa, Oklahoma and Topeka, Kansas. The Tulsa differential would be 67 cents greater than Topeka over a distance of 220 miles.

Ponca City is straight north of Oklahoma City by 102 miles. Incorporation of the 3-cent hauling rate would result in a substantially lower price at Ponca City than was proposed or testified to by any interested party. However, the controlling factor in determining the value of milk north of Zone I must be Tulsa, which is the second largest population center in the market. Also, since prices have historically been the same in this territory, and since both cities are basing points, the minus 18-cent location adjustment ($2.59 differential value) should be adopted.

At Fayetteville, Arkansas, AMPI/Mid-Am proposed a minus 22-cent location adjustment (a $2.55 differential value) while NFO suggested a 34-cent location adjustment ($2.43 differential). A $2.43 differential at Fayetteville is too low relative to the $2.77 mandated Class I differential at Fort Smith which is 62 miles south of Fayetteville. A 34-cent location adjustment at Fayetteville would represent an alignment rate of over 4.8 cents per 10 miles between Fayetteville and Fort Smith. Such a rate, which probably exceeds the cost of hauling packaged milk, would represent a severe misalignment of pricing between distributing plants at Fayetteville and Fort Smith.

The 22-cent location adjustment at Fayetteville would represent about a 3.1-cent rate over the seven 10-mile zones between Fort Smith and Fayetteville. Since such rate is reasonably close to the 3-cent hauling rate for bulk milk, the $2.55 differential proposed at Fayetteville is about as low a price that can be justified at such location. Consequently, the 1-cent increase in the location adjustment at Fayetteville should be adopted.

The two most populated counties in Zone IV, which is north of Tulsa and Fayetteville, are Montgomery County, Kansas and Jasper County, Missouri. The minus 47-cent location adjustment proposed ($2.30 differential) should be adopted since such adjustment represents an alignment rate of about 3 cents per 10 miles on a north-south basis. For example, Independence, Kansas (Montgomery County) is about 90 miles north of Tulsa and Joplin, Missouri (Jasper County) is about 90 miles north of Fayetteville. Consequently, the value of milk in Zone IV, based on a 3-cent hauling rate from north to south, would be $2.32 based on Tulsa, and $2.28 based on Fayetteville. As such, the $2.30 differential that results from the minus 47-cent location adjustment proposed is reasonable in view of the cost of hauling milk and the north to south alignment of prices.

Springfield, Missouri, which is northeast of the major population centers of the Southwest Plains market, is in the heart of a major milk producing region. This region has by far the greatest volume of milk supplies that are available to meet the fluid milk needs of the market. Such factor has been recognized under the pricing structure that existed prior to May 1. Prior to May 1, the Class I differential was $1.60 at Springfield, the same as the differential at St. Louis (209 miles to the northeast), and 14 cents lower than the differential at Kansas City (169 miles to the northwest).

The Class I differential value at Springfield that results from the location adjustments proposed range from $2.01 to $2.30. Proponents of the various differentials relied on a variety of alignment rates to justify their positions. Basically, those parties that proposed the greatest minus location adjustments place primary emphasis on the supplies of milk available in the area and the need to continue the historical pricing structure that recognized such supplies of milk. The lesser minus location adjustment would give little recognition to the supply situation basically indicating that the historical pricing structure has been altered.

Application of the current Southwest Plains location adjustment at Springfield (minus 38 cents) would result in a $2.39 differential. Such differential would be 47 cents higher than at Kansas City and 38 cents higher than the $2.01 differential proposed for St. Louis under another proceeding. Consequently, the alignment of pricing at Springfield has been significantly altered by the change in the Class I differentials on May 1. However, to the extent possible, the substantial volume of milk available in the Springfield area must be recognized under the Southwest Plains order pricing structure.

The extent to which recognition can be given to the substantial production in the area by a relatively lower value of milk is constrained by the price alignment that results among distributing plants at Springfield, Fayetteville and Fort Smith. For example, a $2.01 differential at Springfield, which would result in an alignment rate of about 3 cents per 10 miles between Springfield and Tulsa, would result in a substantial misalignment of pricing between distributing plants in a more north to south direction. With a $2.01 differential, the resulting alignment rate between Springfield and the mandated differential at Fort Smith would exceed 4 cents per 10 miles. Between Springfield and the $2.55 differential at Fayetteville (120 miles), the rate would be about 4.5 cents.

The 3-cent rate, which is a conservative estimate of bulk milk hauling costs, applies on a straight north to south axis. The mandated differentials also have the greatest alignment rate on a straight north to south direction and this rate declines as the direction is tilted to the east or west. However, to recognize the existence of milk supplies in the Springfield area, the 3-cent hauling rate should be used in a northeast direction. This will recognize the situation in the Southwest Plains market whereby the major production area is not located strictly to the north.

The extent to which the 3-cent hauling rate can be shifted to the east is constrained by the location of distributing plants at Fayetteville and Fort Smith. Since Fayetteville is the nearest major population center where a pool distributing plant is located, it must be the basis from which the relative value of milk at Springfield is computed. A 3-cent rate between Fayetteville and Springfield indicates that the price at Springfield should be 36 cents lower than at Fayetteville. Consequently, relative to Zone I, a minus 58-cent location adjustment should apply in the Springfield area, resulting in a $2.19 Class I differential value.

Foremost filed exceptions to the $2.19 Class I differential adopted at Springfield and contended that the Class I differential at Springfield should not be greater than $2.12. The exceptions, however, do not provide a basis to further reduce the Class I differential at Springfield under the Southwest Plains order. The location adjustment at Springfield is limited by the Class I differential to the south at Fayetteville which is also constrained by the mandated Class I differential at Fort Smith. In view of these southern prices, the Class I differential at Springfield cannot be lower than $2.19.

It is noted that the Springfield, Fayetteville and Fort Smith areas are outside the boundaries of the current Southwest Plains marketing area. Such areas have a significant association with the Southwest Plains market, as three of the distributing plants in the area (two at Springfield and one at Fayetteville) are regulated under the order. Also, a

proposal to include this territory in the Southwest Plains marketing area is under consideration.

The appropriate location adjustments, for reasons previously stated, at Fort Smith, Fayetteville and Springfield are zero, minus 22 cents and minus 58 cents, respectively. These adjustments will be reflected in that portion of the location adjustment provisions that relate to areas outside the marketing area. The minus 58-cent adjustment for the Springfield area (Greene County) will be specified and will apply to a large number of additional southern Missouri counties. Extension of this $2.19 constant price surface across southern Missouri, as was proposed, is consistent with the east to west mandated constant price line that extends from Chattanooga through Memphis, Little Rock, and Fort Smith to Oklahoma City. In similar fashion, the $2.77 price line (no adjustment) and the $2.55 price line (minus 22 cents) will be extended across central and northern Arkansas.

However, these two price adjustments for Arkansas will not be specifically indicated in the Southwest Plains order. The regulatory language of the Southwest Plains order, which establishes location adjustment zones to equate values of milk with prices established by other orders in seven states that surround the Southwest Plains marketing area, is being shortened and simplified to accomplish the same objective. Since the proper milk value has been determined at Fayetteville with respect to its primary association with the Southwest Plains market, and at Fort Smith by recognizing the mandated differential, the Central Arkansas order will have to recognize these values under the zone pricing structure to be established for that order. The Central Arkansas order covers a substantial proportion of the territory in Arkansas, and for reasons set forth in the next issue, will zone prices throughout the State to recognize the mandated differential at Fort Smith and the value of milk at Fayetteville. Consequently, the opportunity presents itself to greatly simplify the out-of-area location adjustment provisions of the Southwest Plains order. The Southwest Plains order language no longer needs to specify groups of Arkansas counties, or out-of-area zones, to which specific location adjustments are applied to coordinate pricing with other orders. The order need only specify that the location adjustment under the Southwest Plains order for any plant located in Arkansas shall be the difference between the Southwest Plains Class I price and the Class I price applicable at any plant in Arkansas under the Central Arkansas order. This procedure should also be used for establishing location adjustments in other states surrounding the Southwest Plains marketing area where a substantial proportion of the territory is included under a Federal order (Louisiana, Texas, New Mexico and Colorado). This will greatly shorten and simplify the regulatory language without making any pricing changes from what was proposed and continues the current procedure to recognize the value of milk in other order areas under the Southwest Plains order.

The location adjustment issue in the Wichita (Zone V) area is similar to the Springfield area that was previously discussed. There is a significant amount of production available in the area though not nearly so much as in southwest Missouri. However, a significant change in the price alignment between the Southwest Plains and Greater Kansas City orders occurred on May 1. Prior to May 1, the Class I price under the Southwest Plains order at the four distributing plants in Zone V was only 6 cents greater than the Class I price applicable at Junction City and Topeka under the Greater Kansas City order. Since May 1, the price in Zone V has been 67 cents greater than the Class I price applicable at these northern plants with which Zone V handlers compete for fluid milk sales in Kansas. Based on the 112 miles between Wichita and Junction City, the pricing change represents an increase in the alignment rate from one-half cent to over 5.5 cents per 10 miles. Such a change obviously indicates that there should be a greater minus location adjustment applicable to Zone V under the Southwest Plains order.

The $2.35 differential (42-cent location adjustment) proposed by AMPI/Mid-Am does not go far enough to recognize the alignment problem between Wichita and Kansas City order plants. The resulting alignment rate between Wichita and Junction City would be over 3.5 cents per 10 miles while the rate between Wichita and Ponca City to the south would be just over 2.6 cents per 10 miles.

On the other hand, a $2.22 or lesser differential in Zone V would recognize the alignment problem to the north, but not the south. Such proposed differential, which is based on a 3.5-cent rate from Oklahoma City, would result in an alignment rate of 2.5 cents between Junction City and Wichita. However, such differential would represent a rate between Wichita and Ponca City in excess of 4.1 cents per 10 miles.

The brief of Steffen Dairy suggested that a large number of factors need to be taken into account in establishing the location adjustment in Zone V. However, in suggesting that all such factors are relevant, the $2.22 proposed differential value of Steffen is based on the full cost of hauling bulk milk between Oklahoma City and Wichita. Such proposal ignores the price alignment constraint established by the existence of the $2.59 differential value at Ponca City that extends across northeastern Oklahoma. Also, a location adjustment that is on the conservative side of the cost of hauling bulk milk should be used for reasons previously indicated.

A 3-cent rate based on the distance between Ponca City and Wichita would result in a $2.32 differential in Zone V. However, since the $2.59 differential value extends across northeastern Oklahoma, a $2.30 differential should be established in Zone V which is the same as the differential for Zone IV that is to the east and adjacent to Zone V. Such differential, which is the result of a minus 47-cent location adjustment, results in a alignment rate of slightly more than 3.2 cents between Ponca City and Wichita and slightly less than 3.2 cents between Wichita and Junction City. As a result of the adjustment change, Zones IV and V should be combined.

Steffen took the position in exceptions that the Class I differential at Wichita should be reduced further to mitigate competitive inequities between Southwest Plains order handlers located at Wichita and handlers located to the north that are regulated under the Greater Kansas City order. As indicated previously in this decision, the minus location adjustment at Wichita reflects slightly in excess of the conservative estimate of the cost of hauling bulk milk. This is necessary to reflect the substantial change in the relationship between the Class I differentials for the Southwest Plains and Greater Kansas City orders that took place on May 1, 1986. However, any greater minus location adjustment at Wichita would result in a misalignment of prices between Wichita and more southern locations.

Zone VI, which is the southwestern Kansas area, should be reestablished as Zone V because of the previous combination of Zones IV and V. The proposed minus 27-cent location adjustment should be adopted ($2.50 differential value). There was no opposition to this proposal and there are

no longer any pool plants in the area. Historically, prices in western Kansas have been higher than those in central Kansas because of the influence of higher prices in Colorado under the Eastern Colorado order. Prior to May 1, the Eastern Colorado Class I differential of $2.30 exceeded the Southwest Plains differential by 32 cents. Since May 1, the Eastern Colorado differential has been 4 cents less than Southwest Plains ($2.73 versus $2.77). Consequently, a $2.50 differential in this southwestern Kansas area of relatively limited production is reasonable in view of the historical alignment and the influence of the Eastern Colorado differential in the area.

As previously stated, the procedure for establishing location adjustments outside the Southwest Plains marketing area that recognizes the value of milk established in such areas under other Federal orders should be continued. An advantage of such procedure is illustrated by the circumstances that occurred when the adjacent St. Louis-Ozarks order was terminated. Plants that were regulated under that order became regulated under the Southwest Plains order. However, because the location adjustments of the Southwest Plains order provided for the same pricing of milk in southwest Missouri as was provided under the St. Louis-Ozarks order, no price changes occurred at plants that became regulated under the Southwest Plains order. This is consistent with the requirement that prices under Federal orders are established at the location at which milk is received from producers. If price changes had occurred at the southwest Missouri plants as a result of the regulatory change, prices would have, in effect, been established on the basis of where milk was distributed.

One modification should be made to the proposed out-of-area location adjustments for the central and western Colorado areas. Currently, no location adjustment applies in such areas and a continuation of such procedure was proposed. However, prior to May 1, the Class I differentials under the Southwest Plains and Western Colorado orders were about the same ($1.98 under Southwest Plains versus $2.00 under Western Colorado). Since May 1, the Southwest Plains differential has exceeded the Western Colorado differential by 77 cents. Consequently, a minus 77-cent location adjustment should apply in central and western Colorado areas where no adjustment currently applies.

For those distant areas that are beyond the states where the Southwest Plains order provides specific location adjustments, the rate for establishing location adjustments should be increased to 2.25 cents from the current 1.5 cents. Because of the extensive zoning procedure used, the nearest northern market where the higher rate would apply for establishing a location adjustment is Nebraska. The differentials mandated on May 1 reflect an alignment rate of 2.22 cents per 10 miles between Oklahoma City and Omaha, Nebraska. In terms of the distance between Omaha and the nearer Southwest Plains order basing point (Ponca City) the alignment rate is 2.27 cents per 10 miles. Consequently, a rate of 2.25 cents is reasonable in determining location adjustments in such distant areas. The minus adjustments for all areas not zoned, except Texas, should continue to apply on the basis of the distance between any plant and the nearer of Ponca City or Tulsa. The adjustment for areas in Texas that are outside any Federal milk marketing order area should be plus 2.25 cents per 10 miles between any such plants in Texas and Oklahoma City. Use of such higher rate is consistent with the increase in the alignment rate between the Southwest Plains and Texas orders effective on May 1. There was no opposition to the use of this higher rate, for either plus or minus adjustments. Such rate appears to be reasonable in terms of the new pricing alignment.

1c. Plant location adjustments for handlers under the order regulating the handling of milk in the Central Arkansas marketing area.

The location adjustment provisions of the Central Arkansas order should be amended to provide for a minus 22-cent location adjustment zone across northern Arkansas and a plus 31-cent location adjustment across southern Arkansas. This plus adjustment should also apply in Bowie and Cass counties in Texas. Also, the rate that is used to compute location adjustments at distant areas, both plus and minus adjustments, should be increased from 1.5 cents per 10 miles to 2.1 cents per 10 miles. However, the use of this rate for determining minus location adjustments in southwest Missouri (Springfield area) results in a greater value of milk than was previously considered to be appropriate under the Southwest Plains order. Consequently, a specific minus 58-cent location adjustment ($2.19 Class I differential value) should apply in a southwestern Missouri area that includes 19 Missouri counties.

The current Central Arkansas order provides for no location adjustments at plants located in a 40-county area extending from east to west across the middle of the State of Arkansas. Location adjustments are also not applied at any plant located in the States of Tennessee or Oklahoma. Thus, the order currently recognizes the east/west equal price line that extends from Chattanooga to Oklahoma City. For plants located in Arkansas that are south of the no adjustment zone, as well as plants located in the States of Louisiana, Mississippi or Texas, plus location adjustments apply. At all other locations, including the territory in Arkansas that is north of the no adjustment zone, minus location adjustments apply. The plus or minus adjustments are computed at the rate of 1.5 cents per 10 miles from the nearer of Forrest City, Arkansas (St. Francis County) or Little Rock, provided that plants are more than 60 miles from the nearest basing point.

The Central Arkansas marketing area includes 21 Arkansas counties in the central to eastern part of the State. The market's only major population center is Pulaski County, which includes Little Rock. Pulaski County, with 340,597 residents, is the only county with a population in excess of 100,000. About one-third of the population in the marketing area resides in Pulaski County. Pulaski County plus the three additional counties that comprise the Little Rock metropolitan area contain almost one-half of the population in the marketing area.

Five distributing plants are fully regulated under the order. Three of these plants are in the Little Rock area while one is located at Hot Springs in Garland County. No location adjustments apply at any of these plants. The fifth distributing plant is located outside the marketing area at Paragould, Arkansas (Greene County). Paragould is in the northeastern part of the State and is 85 miles north of Forrest City. Thus, a minus 13.5-cent location adjustment currently applies at Paragould.

The Central Arkansas market is a relatively small, primarily fluid use market. During 1985, total producer milk on the market averaged about 42 million pounds per month. Approximately 80 percent of total receipts were used for Class I purposes by handlers regulated under the order.

The source of producer milk for the market is primarily from farms located in the State of Arkansas. In November 1985, about 86 percent of the total supplies on the market originated in Arkansas, most of which originated on farms located northwest of Little Rock. Missouri represented about 13 percent

of total supplies while Oklahoma represented about one percent. Most of the Missouri milk originated in the south central and southwest part of the State while the Oklahoma supply originated in three eastern counties adjacent to the Arkansas boundary.

The five distributing plants regulated under the order accounted for about 80 percent of the fluid milk products distributed in the Central Arkansas marketing area during the fourth quarter of 1985. The remaining sales were supplied by plants regulated under primarily five other Federal orders. The Class I price changes effective May 1 resulted in varying price increases under the other orders regulating plants that have sales of fluid milk products in the Central Arkansas marketing area. The Class I differential increases were as follows: Greater Kansas City, 18 cents; Southern Illinois, 39 cents; Nashville, Tennessee, 67 cents; Paducah, Kentucky, 69 cents; Memphis, Tennessee and Central Arkansas, 83 cents.

Because of these pricing changes, AMPI/Mid-Am proposed that the location adjustment provisions of the order be amended. The proposal by the cooperatives is essentially the same as that adopted herein, except for the modification for territory in southwest Missouri. The cooperatives contend that their proposal, which would result in a location adjustment change at only one pool distributing plant location, is necessary to provide competitive equity with handlers regulated under the Memphis, Tennessee; Southern Illinois; Southwest Plains; and Paducah, Kentucky orders. As a result of the changes in the Class I differentials on May 1, the cooperatives contend that the minus location adjustment at Paragould should be increased to 22 cents from the current 13.5 cents.

The only opposition to the cooperatives' proposal was by the handler who operates the distributing plant at Paragould (Foremost). Foremost contends that the location adjustment at Paragould should be minus 34 cents, resulting in a Class I differential value of $2.43. The handler contends that the lower price is justified on the basis of the areas in which Foremost distributes fluid milk products in competition with other handlers. The handler testified that 80 percent of the plant's sales (50 percent in the Paragould area and 30 percent to the north) are in competition with handlers in the St. Louis area who are regulated under the Southern Illinois order. Also, the handler indicated that about 17 percent of the plant's sales are in the Little Rock area while the remaining three percent are in the Memphis area. As a result, the handler contends that the location adjustment at Paragould should be based primarily on the price relationships between Little Rock and Paragould and between Paragould and St. Louis. Foremost concludes that a 34-cent location adjustment is reasonable since it would result in an alignment rate of about 2 cents per 10 miles between Paragould and Little Rock as well as between Paragould and St. Louis.

Because of the changes in the Class I differentials on May 1, the location adjustment provisions of the Central Arkansas order should be revised. The issue is critical only with respect to the adjustment at Paragould since it is the only location at which an adjustment applies to a distributing plant that is regulated under the order. All other pool distributing plants are located around Little Rock where the mandated Class I differential applies.

Currently a minus 13.5-cent location adjustment applies at Paragould. Such adjustment is based on a 1.5-cent rate over the 90 miles between Paragould and Forrest City, Arkansas. Forrest City, which is east northeast of Little Rock, has been used as a basing point in conjunction with Little Rock for a number of years to establish location adjustments at distant plants. The use of the distance between any plant and the nearer basing point currently has the effect of establishing more uniform location adjustments across northern Arkansas than if only Little Rock were a basing point. The fact that the Paragould handler contended that its current location adjustment based on Forrest City fails to recognize the location value of milk at Paragould relative to the major population center at Little Rock, is irrelevant to a determination of the appropriate location adjustment at Paragould. It is noted, however, that the current and future use of Forrest City for determining location adjustments at distant plants does nothing more than recognize the identical east-west axis Class I differentials at Little Rock and Memphis, both prior to and since May 1, 1986.

The continued use of the 13.5-cent location adjustment would leave the Foremost plant in the same competitive position relative to handlers in the Little Rock area. However, since the Class I differentials were increased by greater amounts in the south relative to the north, the competitive position of the plant, relative to more northern plants, would be worsened. For example, prior to May 1, the Central Arkansas Class I differential exceeded the differential at St. Louis by 34 cents, reflecting an alignment rate of less than one cent between St. Louis and Little Rock. Effective May 1, the Southern Illinois Class I differential was increased by 39 cents while the Central Arkansas differential was increased by 83 cents, reflecting an alignment rate of about 2.2 cents between St. Louis and Little Rock. At the Paragould location, the alignment rate between Paragould and St. Louis was less than one cent prior to May 1, and would be over 2.8 cents since May 1 if the current minus 13.5-cent location adjustment were continued. Consequently, it would appear that some increase in the minus location adjustment at Paragould would be reasonable in view of the alignment change.

Foremost contended that, since only a small proportion of its fluid milk sales are in the Memphis area, the price relationship between Memphis and Paragould makes no sense in determining the location adjustment at Paragould under the Central Arkansas order. Basically, such a position would ignore certain inter-market price relationships and how changes in price relationships could have an impact on sales area changes of distributing plants. The current 13.5-cent adjustment at Paragould represented an alignment rate of 1.5 cents per 10 miles between Paragould and Memphis. A 34-cent location adjustment would increase the alignment rate between Paragould and Memphis to almost 3.8 cents per 10 miles. Consequently, the $2.77 differential which was mandated at Memphis, is a limiting factor to the possible increase in the minus location adjustment at Paragould.

The location adjustment at Paragould must be viewed primarily in terms of the inter-market mandated pricing structure, although the location of the available milk supplies for the Central Arkansas order also are important. Consideration of both factors indicates that the minus location adjustment at Paragould should not be greater than 22 cents.

A mandated $2.77 Class I differential applies at Little Rock, in the center of Arkansas, as well as at Memphis to the east and Fort Smith to the west. This provides a constant east-west price line across Arkansas. The price surface actually extends for about 780 miles from Oklahoma City to Chattanooga. It is also noted that the steepest alignment rates among mandated differentials occur on a straight north to south axis and decline to zero on an east to west axis.

A 3-cent conservative estimate of current bulk milk hauling costs, applied from the $2.77 Class I differential line

straight to the north, should be the basis upon which the location adjustment at Paragould, as well as all of northern Arkansas, is determined.

On the western border of Arkansas, a 3-cent rate from the $2.77 differential at Fort Smith would result in a 21-cent location adjustment at Fayetteville. On the eastern border of Arkansas, a 3-cent rate from the $2.77 differential at Memphis would result in a 21-cent location adjustment at Blytheville, Arkansas. Although there are no pool plants located at Blytheville, it is due north of Memphis and thus approximates the north to south alignment of the mandated differentials and the appropriate value of milk at Paragould to the west of Blytheville. Extension of an equal price surface across northern Arkansas is reasonable in view of the mandated price surface across central Arkansas. Also, a minus 22-cent location adjustment, which is slightly in excess of the 3-cent bulk milk hauling rate, reasonably reflects the value of milk in northern Arkansas versus central Arkansas.

The supplies of milk for the Central Arkansas order are primarily located northwest of Little Rock. Also, there are substantial reserve milk supplies available in southwest Missouri. Relative to the supplies in southwestern Missouri, there are relatively limited supplies in southeastern Missouri. Consequently, if there were any basis to deviate from a flat price surface across northern Arkansas, the supplies of milk available in southwest Missouri would indicate that prices in northwestern Arkansas should be lower than in northeastern Arkansas. Such a pricing structure would be the reverse of the structure proposed by Foremost. In any event, the location adjustment at Paragould and across northern Arkansas must be limited to not more than 22 cents because of pricing constraints imposed by the mandated differentials at cities to the south.

Foremost filed exceptions to the minus 22-cent location adjustment at Paragould. The handler claims that the adjustment should be minus 34 cents on the basis of mileage to competitors to the north and south of Paragould. Foremost further contends that the use of Forrest City to establish the location adjustment at Paragould is not supported by record evidence since Forrest City is neither a supply nor a consumption center.

Foremost's exceptions fail to recognize the essential record evidence and reasons previously set forth in this decision pertaining to the location adjustment at Paragould. As previously stated, the location adjustment at Paragould reflects a 3-cent per 10 miles bulk milk hauling cost on a straight north-south basis along both the eastern (Memphis) and western (Fort Smith) boundaries of the State of Arkansas that approximates the north-to-south alignment of the mandated Class I differentials. Also, an equal east-west price surface across northern Arkansas (Paragould to Fayetteville) is consistent with the mandated flat price surface across central Arkansas. To the extent that there is any basis to establish a different price at Paragould than at Fayetteville, the proximity of the two cities to the substantial southwestern Missouri production area would require a higher price at Paragould (less than a minus 22-cent location adjustment) than at Fayetteville. Consequently, the record evidence pertaining to the mandated Class I differential relationships, the cost of hauling bulk milk, and the recognition of the market's primary supply areas do not permit a greater minus location adjustment than 22 cents at Paragould.

The Arkansas counties located to the south of the base zone, as well as Bowie and Cass counties in Texas, should be included in a plus 31-cent location adjustment zone. Such an adjustment, which would result in a $3.08 differential value in such areas, was not opposed by any interested party and there are no pool plants in the area. Such plus adjustment is consistent with the increasing value of milk to the south and the alignment of pricing between the Central Arkansas and southern markets. Since May 1, the Class I differentials under the Texas and Greater Louisiana orders ($3.28) has exceeded the Central Arkansas differential by 51 cents. Prior to May 1, the Greater Louisiana differential ($2.47) exceeded the Central Arkansas differential ($1.94) by 53 cents while the Texas differential exceeded the Central Arkansas differential by 38 cents. Since May 1, the alignment rate between Little Rock and Shreveport, Louisiana has been 2.55 cents per 10 miles and the alignment rate between Little Rock and Dallas, Texas has been 1.59 cents per 10 miles. At Texarkana, the 31-cent proposed location adjustment represents an alignment rate of 2.2 cents, which is within the range of the alignment rates among markets which decline as the alignment shifts from a north-south to an east-west axis. At El Dorado, Arkansas, the plus 31-cent location adjustment represents a 2.58-cent rate from Little Rock. The reflection of such a rate, which is in excess of the rate between Little Rock and Shreveport, is appropriate since El Dorado is directly south of Little Rock. Also, such rate is less than the north-south alignment of the mandated Class I differentials between Little Rock and Monroe, Louisiana which reflects a rate of 2.8 cents per 10 miles. Consequently, the plus 31-cent location adjustment for southern Arkansas (and Bowie and Cass counties in Texas) represents a reasonable location value of milk relative to prices in markets to the south.

The 2.1-cent rate for establishing plus location adjustments on the basis of mileage for plants located in Mississippi, Louisiana, and Texas is also reasonable in view of the range of alignment rates to the south as previously set forth. In addition, the 2.1-cent rate for establishing minus location adjustments for areas north of Arkansas is appropriate in view of the alignment rate reflected between the Central Arkansas and northern markets since May 1. For example, the difference between the Class I differentials at Little Rock and Kansas City represents less than 2.2 cents per 10 miles over the 390 miles between the cities. Also, the approximate alignment rate between St. Louis and Little Rock is less than 2.2 cents per 10 miles. However, it is noted that the use of the 2.1-cent rate for determining location adjustments (both plus and minus) on the basis of mileage to distant areas is based on the nearer of Little Rock or Forrest City. Such procedure, which is currently utilized, recognizes the constant, east-west axis pricing across Arkansas in northern and southern areas.

Use of the 2.1-cent rate should be modified with respect to territory in southwest Missouri. Use of such rate would result in about a minus 46-cent location adjustment at Springfield, Missouri, representing a $2.31 Class I differential value. Such value would be in excess of the value of milk in this major production area under the Southwest Plains order. Consequently, a minus 58-cent location adjustment should apply in the southwest Missouri area under the Central Arkansas order.

The proposed use of the 2.1-cent rate for establishing location adjustments in southwest Missouri under the Central Arkansas order was not opposed by any interested party. However it is noted that the location adjustment proposed by AMPI/Mid-Am resulted in essentially the same values of milk that were initially proposed for the southwest Missouri areas under both the Southwest Plains and Central Arkansas orders. Also, a substantial amount of testimony and evidence was presented and considered with respect to the location value of milk in southwest Missouri under the Southwest Plains

order. Although the primary association of the southwest Missouri area is with the Southwest Plains order, the substantial volume of production in the area is available to other southern markets as well as to the Southwest Plains market. Consequently, the value of milk in southwest Missouri should be reflected under the Central Arkansas order.

No location adjustment should apply in the States of Oklahoma and Tennessee, as is currently provided under the Central Arkansas order, to continue to reflect the constant east-west axis price alignment. In total, the location adjustment provision of the Central Arkansas order, as amended, will reflect the alignment of pricing established among markets on May 1, both on an east-west and north-south basis.

1d. Plant location adjustments for handlers under the orders regulating the handling of milk in the Texas and Rio Grande Valley marketing areas

The location adjustment provisions of the Texas order should be amended to provide for a better alignment with prices established in surrounding markets on May 1, 1986. Within the marketing area, price alignment considerations require location adjustment changes in those areas that are east, northwest, and west of Dallas. Specifically, the minus location adjustment for Zone 1–A, which is northwest of Dallas, should be increased from 12 to 25 cents. Also, the plus location adjustments of 6 cents for Zone 2 (east of Dallas) and 25 cents for Zone 6 (west of Dallas) should be eliminated. For reasons set forth hereafter, no other location adjustment changes are necessary within the marketing area to reflect the cost of hauling milk from where it is produced to where it is needed for fluid use. The current intra-market pricing structure reflects the extent to which current hauling costs need be recognized to cover the additional costs in shipping milk substantial distances from northern production areas to deficit southern population centers. The order was amended May 1, 1985 on the basis of a hearing held October 4–7, 1983 to consider proposals to completely restructure the location adjustment provisions of the order. Official notice is taken of the Acting Assistant Secretary's final decision issued March 6, 1985 (47 FR 9661). Such decision concluded that the only price change necessary on the basis of the hearing record was an 18-cent increase in the plus location adjustment for Zone 8 (Houston). Such action resulted in the current total location adjustment for Zone 8 of 54 cents, and is now the subject of litigation. Several proposals in this proceeding relating to the intra-market pricing structure provided the opportunity for a further exploration of the same issues considered at the 1983 hearing.

For territory outside the Texas marketing area, the current procedure of establishing location adjustments that recognize the value of milk in other order areas should be expanded to include plants located in New Mexico, Oklahoma, Arkansas and parts of Kansas and Missouri. For more distant areas, the rate used to compute minus location adjustments should be increased from 1.5 cents to 2.2 cents per 10 miles from Dallas. On the basis of exceptions, the rate of 2.2 cents per 10 miles should also be used to compute minus location adjustments for a 16-county area of southwest Texas that is outside the marketing area of any Federal order. The basing point for establishing location adjustments in such area should be San Angelo.

No location adjustment changes are necessary under the Rio Grande Valley order. A location adjustment change was proposed by a handler who operates a distributing plant at San Angelo, Texas, that is regulated under the Texas order and two plants that are regulated under the Rio Grande Valley order. The purpose of the proposal was to improve the alignment of prices between the Rio Grande Valley order and the handler's plant at San Angelo. Prior to May 1, 1986, the Class I differentials under the Rio Grande Valley and Texas orders were essentially the same. However, the mandated Class I differential for the Texas order was increased by 96 cents ($2.32 to $3.28) while the mandated differential for the Rio Grande Valley order ($2.35) was not changed. A description of the Rio Grande Valley pricing structure, as well as the reasons for denying the proposal, are included with the discussion concerning the appropriate location adjustment for the San Angelo area under the Texas order.

The current pricing structure of the Texas order provides for 13 pricing zones in the marketing area. Zone 1 (which includes the Dallas/Ft. Worth area) is the basing point for the announcement of the Class I price to handlers and the blend price payable to producers each month. No location adjustment applies to plants in Zone 1 which is the zone in which the Class I differential specified in the order is directly applicable in establishing monthly Class I prices. Class I prices to handlers and blend prices payable to producers for all other zones are established by location adjustments to the Zone 1 prices. A minus location adjustment applies to milk received at plants in Zone 1–A, which is northwest of Zone 1. Plus adjustments apply to all other zones. Generally, Zone 2 is east of Zone 1 and borders with the marketing area of the Greater Louisiana order which covers most of the territory in Louisiana. Zone 6 is west of Zone 1 and borders with the marketing area of the Lubbock-Plainview marketing area and the marketing area of the Rio Grande Valley order which covers most of the territory in New Mexico. All other zones of the Texas marketing area are south of Zones 1 and 2.

The current location adjustments for each of the zones, as well as the resulting Class I differential values prior to May 1, 1986, are indicated in the following table. Although each zone consists of groups of counties, the major cities within such zones are indicated for reference purposes. Also, for comparison purposes, the Class I differential values adopted herein are included. The adopted changes reflect the $3.28 mandated differential and the location adjustment changes for Zones 1–A, 2, and 6 as previously indicated.

[Dollars per hundredweight]

Zone/Cities	Prior to May 1, 1986		Adopted pricing	
	Location adjustment	Class I diff.	Location adjustment	Class I diff.
1-A Burkburnett	−.12	2.20	−.25	3.03
1 Dallas, Ft. Worth	0	2.32	0	3.28
2 Tyler, Marshall	+.06	2.38	0	3.28
3 Waco	+.15	2.47	+.15	3.43
4 Lufkin	+.18	2.50	+.18	3.46
5 Bryan	+.20	2.52	+.20	3.48
6 San Angelo	+.25	2.57	0	3.28
7 Austin	+.30	2.62	+.30	3.58
8 Beaumont, Houston	+.54	2.86	+.54	3.82
9 San Antonio	+.42	2.74	+.42	3.70
10 Victoria	+.53	2.85	+.53	3.81
11 Corpus Christi	+.66	2.98	+.66	3.94
12 Edinburg, Harlingen	+.75	3.07	+.75	4.03

During December 1985, 34 distributing plants were regulated under the order. Of these, 20 are located in Zones 1, 8, and 9 (Zone 1, 11 plants; Zone 8, 5 plants; and Zone 9, 4 plants), which are the most heavily populated areas of the marketing area. Three of the plants are located in Zone 2, and two plants are located in each of Zones 6, 11, and 12. One plant is located in each of Zones 1–A, 3, 4, 5, and 7. There are no longer any plants in Zone 10.

In addition to distributing plants, two manufacturing plants operated by AMPI that are pooled under the order as

cooperative balancing plants are located in the heavy milk producing areas of the market in Zone 1. These plants are located at Sulphur Springs (Hopkins County) and Muenster (Cooke County). Two supply plants are also regulated under the order. One is located at Yantis (Wood County) and one at Aurora, Missouri (Lawrence County). There are also four nonpool plants located in Zone 1 that obtain producer milk supplies by diversion from other plants. Two of these are located in the Dallas area while the other two are located in the heavy Hopkins County production area. Two additional nonpool plants that receive producer milk are located in Zone 8 of the marketing area. Additional manufacturing plants that serve as outlets for producer milk are located in the States of Texas (outside the Texas marketing area), Oklahoma, Missouri and Arkansas.

The 1980 population of the Texas marketing area exceeded 12.3 million persons, almost a 29 percent increase from 1970. Most of the population resides within Zones 1, 8, and 9 which accounted for over 67 percent of the total marketing area population. Zone 8, the largest population center, accounted for 29 percent of the total population and experienced a population growth of more than 37 percent between 1970 and 1980. Zone 1 is the second largest population center representing almost 28 percent of total population with a 24 percent increase between 1970 and 1980. Zone 9 is the third most populated area representing about 10.5 percent of total population with a 20 percent increase from 1970 to 1980.

The volume of producer milk associated, in total, with the Texas market (over 372 million pounds per month during 1985) is adequate to meet fluid milk needs. About 252 million pounds of producer milk per month was used in fluid milk products, indicating a Class I utilization of about 68 percent for 1985. Class I utilization ranged from a high of about 77 percent in January to a low of 60 percent in June. The Class I utilization for 1984 was about 70 percent (ranging from 77 to 63 percent) while the 1983 Class I utilization was 64 percent (ranging from 71 to 57 percent).

The milk associated with the Texas market is produced on farms located in the States of Arkansas, Mississippi, Missouri, New Mexico, Oklahoma and Texas. By far, Texas represents the greatest source of supply, representing in excess of 80 percent of the total milk pooled on the market during 1985. Such production exceeded the amount of producer milk in Class I use by almost 20 percent. New Mexico, representing about 10 percent of total market supplies, was the second greatest supply area.

The major Texas production areas are located in the northern portion of the marketing area, primarily in the Sulphur Springs (Hopkins County) and Stephenville (Erath County) areas. Production available in the top 10 milk producing counties in the marketing area represented about 45 percent of the total amount of producer milk pooled on the market during December 1985. Of these counties, six are located in Zone 1, three in Zone 3, and one in Zone 1–A. These 10 counties, plus eight additional heavy milk producing counties in the vicinity of Sulphur Springs and Stephenville (four in each area) represent in excess of 54 percent of the total amount of producer milk pooled under the order during December 1985.

Fluid milk needs of the Texas market are supplied, to a very limited degree, by handlers who operate plants that are regulated under other Federal order markets. Handlers regulated under five other orders had sales of fluid milk products in the marketing area during 1985 that averaged less than 6.7 million pounds per month. The orders regulating these plants that have sales in the marketing area, and the increases in the Class I differentials on May 1, 1986, are as follows: Greater Louisiana, 81 cents; Southwest Plains, 79 cents; Lubbock-Plainview, 7 cents; Texas, 96 cents; and Texas Panhandle, 24 cents. In addition, there was no change in the Class I differential under the Rio Grande Valley order which regulated a handler who has fluid milk sales in the Texas marketing area.

AMPI and Mid-Am, which represent a substantial proportion of the dairy farmers who supply the Texas market, proposed that location adjustment changes be made in Zones 1–A, 2, 3, 4, 5, 6 and 7 of the marketing area. The cooperatives contend that the changes are necessary because of changes in the alignment of prices between the Texas and other Federal order markets effective May 1, 1986, and to recover a greater portion of transportation costs that are incurred in supplying certain areas of the market.

For Zones 1–A and 2, the cooperatives indicated that price alignment considerations necessitate location adjustment changes. For Zone 1–A, the cooperatives proposed that the minus location adjustment be increased from 12 to 25 cents to recognize the 51-cent difference established between the Southwest Plains and Texas order Class I differentials. They contend that the 25-cent adjustment for this territory that is northwest of Dallas would be appropriate since the area is equidistant between Oklahoma City and Dallas. For Zone 2, which is east of Dallas, the cooperatives proposed that the current plus 6-cent location adjustment be eliminated since identical Class I differentials were established for the Texas and Greater Louisiana orders. Prior to May 1, the Greater Louisiana Class I differential exceeded the Texas differential by 15 cents. With the elimination of this difference between differentials, the cooperatives contend that the 6-cent adjustment should be eliminated to provide an east-west alignment of prices between Shreveport, Louisiana and Dallas.

For Zone 3, which is south of Zone 1, the cooperatives proposed that the plus location adjustment be increased from 15 to 19 cents to reflect more of the cost of hauling milk to Waco. For Zone 4, which is east of Zone 3 and south of Zone 2, the cooperatives proposed that the plus location adjustment be increased by 4 cents to 22 cents. They contend that the increase is necessary to align prices between a distributing plant at Lufkin in Zone 4 with distributing plants located to the north in Zone 2 at Tyler and Marshall. In addition, the cooperatives contend that the higher price is necessary to cover a greater portion of the hauling cost incurred in supplying the Zone 4 plant.

For Zone 5, which is southeast of Waco in Zone 3 and southwest of Lufkin in Zone 4, the cooperatives proposed that the plus adjustment be increased from 20 to 30 cents. The cooperatives contend that the increase is necessary to align prices between a distributing plant at Bryan in Zone 5 with the bottling plant at Waco in Zone 3. In addition, the cooperatives contend that the higher price is necessary to cover more of the transportation costs incurred in shipping milk long distances to supply the Zone 5 plant. For Zone 7, which is south of Zones 3 and 5, the cooperatives proposed that the plus location adjustment be increased from 30 to 39 cents. The cooperatives contend that such increase is also necessary to cover a greater portion of the costs of hauling milk to Zone 7.

For Zone 6, which is the western most zone in the Texas marketing area, the cooperatives proposed that the current plus 25-cent location adjustment be eliminated. The cooperatives contend that such change is necessary because of the substantial change in the price alignment between the Texas order and other Federal order markets to the west, primarily the Rio Grande Valley order. Prior to May 1, there was only a 3-cent

difference between Class I differentials under the Texas order ($2.32) and the Rio Grande Valley order ($2.35). Effective May 1, the Texas order differential was increased by 96 cents while there was no increase in the mandated Rio Grande Valley order differential. With the current plus 25-cent location adjustment, the Class I differential value at San Angelo would exceed the Rio Grande Valley order differential by $1.18. The cooperatives contend that elimination of the plus adjustment would improve the new east-west alignment and allow the distributing plant at San Angelo to continue to compete for sales of fluid milk products with handlers located in Zones 1, 3, 7, 9, and 11 of the marketing area. The cooperatives indicated that any greater price reduction was not warranted because of limited competition for sales in west Texas with plants in eastern New Mexico. The cooperatives' proposal was supported by Safeway, Inc., which operates distributing plants under the Texas and Rio Grande Valley orders.

For Zone 8, the cooperatives proposed that the current plus 54-cent location adjustment be continued. Such proposal was basically in opposition to proposals by other parties that would reduce the current Class I price for Zone 8 by 18 cents. The cooperatives contend that Zone 8 is the most difficult and costly area to supply because of the substantial distances that milk must be shipped from production areas to supply the fluid milk needs of distributing plants in Zone 8.

For locations outside the Texas marketing area, the cooperatives proposed that the Texas order location adjustments recognize the location value of milk in such areas established under other Federal orders. This procedure is currently utilized under the Texas order for Texas territory included in the Texas Panhandle and Lubbock-Plainview orders and some Oklahoma territory included in the Southwest Plains order. The cooperatives' proposal would extend this procedure to include all of the territory in the Southwest Plains marketing area, a portion of Missouri and all of the State of Arkansas. For Louisiana and New Mexico (including El Paso County, Texas, which is in the Rio Grande Valley marketing area) the cooperatives proposed that no location adjustment be applied under the Texas order. The cooperatives proposed that this procedure, which is currently utilized under the Texas order, be continued despite the substantial change that occurred between the Class I differential values under the Texas and Rio Grande Valley orders on May 1, 1986. The cooperatives contend that no location adjustment should apply to milk that is pooled under the Texas order that is received at plants regulated under the Rio Grande Valley order even though the Class I differential under the Rio Grande Valley order is 93 cents less than the Texas order Class I differential effective May 1. The cooperatives contend that application of the Texas order Zone 1 value is necessary to allow AMPI to recover substantial transportation costs that are incurred in qualifying milk produced in New Mexico and El Paso County for producer status under the Texas order in the event that such milk is needed to supplement the fluid milk requirements of the Texas market.

For other areas outside the marketing area the cooperative proposed that a rate of 2.1 cents per 10 miles from Dallas be used to establish location adjustments.

The Southland Corporation (which operates five distributing plants under the order) and Hygeia Dairy Co. (which operates two distributing plants under the order) jointly proposed that the location adjustment for Zone 8 be reduced by 18 cents to the plus 36-cent adjustment that applied to milk received at plants in Zone 8 prior to May 1, 1985. Southland and other handlers who operate plants in Zone 8 (Borden, Carnation, and Safeway) have challenged the prior action to provide for a 54-cent location adjustment for Zone 8. In this proceeding, Southland testified that distributing plants in Zone 8 received sufficient supplies of milk to meet fluid requirements when the 36-cent location adjustment applied and that, consequently, there was no reason to provide for a 54-cent location adjustment. Southland testified that the 36-cent location adjustment should be reestablished since plants in Zone 8 are adequately supplied, which according to Southland, indicates that there is no need for any greater economic incentive for milk to be shipped to Zone 8 from distant production areas. Southland also testified that a return to a 36-cent location adjustment would reestablish the historical east-west price alignment between Zone 8 of the Texas order and the Greater Louisiana and New Orleans-Mississippi orders. Prior to May 1, 1985, the Zone 8 Class I differential value was $2.68, compared to $2.85 under the New Orleans-Mississippi order. Effective May 1, 1985, with the 54-cent location adjustment for Zone 8, a $2.86 Class I differential value was established. Southland contends that a $3.64 differential value in Zone 8 ($3.28 mandated differential plus a 36-cent location adjustment) would provide the proper east-west alignment with the $3.85 differential value mandated for New Orleans. Southland also testified that Congress did not mandate any increase in the Class I differential for any Texas location south of Dallas where the order Class I differential applies. Therefore, since Zone 8 and intervening zones are adequately supplied according to Southland, Southland contends that the Zone 8 location adjustment should be reduced to 36 cents, and the AMPI/Mid-Am proposed location adjustment changes for Zones 2, 3, 4, 5, and 7 should be denied. A reduction of the Zone 8 location adjustment to 36 cents was also proposed by Borden, Inc., and supported by Safeway, Inc. for essentially the same reasons testified to by Southland.

Southland and Hygeia also proposed that a new minus location adjustment Zone 1–B be established in the heavy milk producing area of Zone 1. The proposal would establish a minus 18-cent location adjustment zone to include 10 counties located north and northeast of Dallas. Southland testified that neither the mandated 96-cent increase in the Texas Class I differential, nor the mandated changes in the price relationships among markets that incorporates north to south and west to east movements of milk, provide an economic incentive for milk to be shipped to distributing plants in Dallas. Southland testified that this lack of incentive occurs because Zone 1 currently includes both the consumption and production areas. Since manufacturing plants are located in the production area at Sulphur Springs and Muenster, producers who supply such manufacturing plants receive the same blend price as producers who supply distributing plants at Dallas. As a result, Southland contends that producers who supply distributing plants at Dallas, which is 80 miles southwest of Sulphur Springs, should receive an 18-cent higher price than producers whose milk is received at Sulphur Springs. Consequently, under the current pricing structure, Southland proposed that an 18-cent lower price be established at Sulphur Springs. Southland contends that at times there has been a shortage of milk at distributing plants in Dallas while milk was being processed at AMPI manufacturing plants at Sulphur Springs and Muenster and, thus, a price incentive should be incorporated under the order for milk to be shipped to Dallas. Southland also testified that the impact of its proposal on total producer returns would be insignificant because

there are no Class I bottling plants in the proposed zone and that its proposal would establish a better east-west alignment of pricing across north Texas than the AMPI/Mid-Am proposal. In its brief, Southland indicated that even if there were distributing plants in its proposed lower price zone, the adjustment would be appropriate in view of the proper location value of milk.

For out-of-area locations, Southland proposed the current procedure for recognizing the value of milk under other orders in certain territory in Texas and Oklahoma. However, Southland proposed that for other areas, particularly for plants located in El Paso County, Texas, and New Mexico (where no location adjustment currently applies under the Texas order), a minus location adjustment should apply at the rate of 2.2 cents per 10 miles between any plant and Dallas. Southland contends that such change in pricing is necessary because of the substantial change in the price relationship between the Texas and Rio Grande Valley orders effective May 1, 1986. Southland contends that even under the price relationship that existed prior to May 1, 1986, reserve milk supplies for the Rio Grande Valley order were pooled under the Texas order, thereby depressing the blend price to all producers who supply the Texas market. Southland contends that absent a change in the location adjustments for El Paso and New Mexico, there would be a substantial economic incentive for surplus milk produced in such areas to be pooled on the Texas order. Therefore, Southland contends that a minus location adjustment should apply to milk received at plants in El Paso and New Mexico to reflect its economic value at such locations relative to the Texas market, thereby establishing an economic disincentive for such milk to be pooled on the Texas market.

With respect to other proposals concerning Zone 8, Schepps Dairy (a handler who operates a distributing plant in Zone 1) proposed that the plus location adjustment be increased from 54 cents to 72 cents. Schepps contends that an increase is necessary to cover the additional transportation costs that are incurred in shipping milk long distances from northern production areas to the deficit Zone 8 consumption center. Schepps contends that the Zone 8 location adjustment should reflect current hauling costs of 3.5 cents per 10 miles over the distance between Houston and the supply area for Zone 8. Schepps testified that the Houston milkshed extends outward 325 miles into the procurement area for Zone 1 plants. Schepps testified that since the procurement area for Zone 1 plants extends outward from Dallas by about 60 miles, the Zone 8 location adjustment should reflect the additional mileage to Houston (325−60 = 265 miles) at 3.5 cents per 10 miles, resulting in about a 94-cent location adjustment. In view of this cost, Schepps contends that the proposed 75-cent location adjustment would be more reasonable than a 54-cent adjustment. Also, Schepps testified that the 75-cent adjustment is reasonable in view of the 72-cent additional cost incurred by Mid-Am to supply Houston versus Dallas from the same production area, as well as in terms of AMPI's average unrecovered transportation costs of 20 cents to supply Zone 8 plus the current 54-cent location adjustment. Schepps contends that with the current location adjustment Zone 8 handlers are not paying the value of the economic service provided by producers, thus resulting in inequities among handlers and producers.

Kroger, Inc., which also operates a pool distributing plant in Zone 1, proposed that Montgomery County be removed from Zone 8 and placed in a separate price zone. The zone change was proposed because Kroger is in the process of building a new distributing plant at Conroe in Montgomery County to service fluid milk outlets in Zone 8 and other southern areas. Basically, Kroger proposed that the plus location adjustment for Montgomery County be 10 cents less than for the rest of the territory in Zone 8. Kroger proposed that the Zone 8 location adjustment be increased to 64 cents but that Montgomery County be included in a separate 54-cent plus location adjustment zone. As an alternative, Kroger proposed that the location adjustment for Montgomery County be 44 cents with a 54-cent location adjustment applicable in the rest of the territory currently in Zone 8. Kroger testified that a 10-cent difference in pricing between Conroe and Houston is justified since Conroe is located some 39 miles north of Houston closer to the production area that would have to be relied on for a source of supply for the Conroe plant. Kroger testified that haulers who were contacted said they would haul milk to Conroe for less than the cost of hauling milk to Houston. Kroger also testified that significant traffic congestion occurs between Conroe and Houston, resulting in lower overall transportation costs for the Conroe location, which is a further basis for a lower plus location adjustment at Conroe than at Houston.

Dean Foods Company proposed that the location adjustment for plants in Zone 6 of the Texas marketing area be changed from plus 25 cents to minus 25 cents per hundredweight and that the minus 15-cent location adjustment be eliminated at plants located in eastern New Mexico that are regulated under the Rio Grande Valley order. Dean, who operates a distributing plant at San Angelo in Zone 6, as well as plants regulated under the adjacent Lubbock-Plainview and Rio Grande Valley orders, contends that its proposed changes are needed primarily to reflect the substantial change in the Class I price relationship between the Texas and Rio Grande Valley orders effective May 1, 1986. Dean claims that its proposed changes in the location adjustment provisions of the orders are needed to allow the San Angelo plant to remain competitive with bottling plants regulated under other nearby orders for sales of fluid milk products.

The Dean proposal for the Rio Grande Valley order was opposed by AMPI and Safeway on the basis that the proposed action would be an inappropriate method of trying to resolve the resale problems that Dean anticipates. With respect to the handler's proposal for the Texas order, Foremost, Borden, Hygeia and Southland opposed any change in the plus 25-cent location adjustment at plants in Zone 6. These major Texas handlers claimed that any changes in the location adjustment for Zone 6 would create competitive inequities among handlers for sales of fluid milk products in Zone 6 and in territory south and east of Zone 6.

Necessary changes to the location adjustments under the Texas order involve a consideration of the intra-market pricing structure as well as the issue of inter-market price alignment between the Texas and other Federal order markets. Although these issues are related, price alignment consideration among Federal order markets is of greater importance in northern and western portions of the Texas marketing area. In other portions of the Texas marketing area, location adjustments must reflect the structural characteristics of the market and an intra-market alignment of the varying location values of milk throughout the market.

The Texas order regulates handlers operating a large number of plants dispersed over a large geographic area. Consequently, location adjustments are necessary to reflect substantial differences in the value of milk because

of the greater distances that milk must be hauled to meet the fluid milk needs of the various population centers in the market. Consequently, in order to recognize the value of the service provided by producers, location adjustments are intended to reflect the cost of hauling milk from where it is produced to where it is needed for fluid use. Thus, location adjustments provide an economic incentive for milk to be shipped to alternative outlets from production areas and compensate those producers who incur the cost of providing a greater service supplying distant plants relative to those producers who supply nearby plants. This promotes a measure of equity among producers, as well as uniformity of pay prices, on the basis of the service provided. At the same time, location adjustments that reflect the value of the transportation service provide equity and uniformity of pricing among handlers by establishing a price for milk that is commensurate with its value at the point of receipt. To the extent that certain handlers are able to obtain milk at less than its location value, they may have an economic advantage relative to other handlers.

The structure of the Texas market was set forth previously. The major structural characteristic relevant to the intra-market location adjustment issue is the proximity of production areas to the major population centers in the market. The major population centers, in order of importance, are Zones 8, 1, and 9 of the marketing area. The major production areas are located in north Texas, specifically northeast and southwest of the Dallas/Fort Worth area. These northern production areas are a source of supply for each of the primary consumption centers. Thus, there must be an economic relationship of prices among Zones 1, 8, and 9 relative to their common primary procurement areas. The price relationship among these zones establishes an overriding price structure to which prices in other intervening zones should be related. It is noted that no location adjustment changes were proposed for Zone 9 or other more southern zones of the marketing area. Although the Zone 9 location adjustment is important to the primary price structure, the Zone 11 and 12 location adjustments are not at issue, since there were no proposed changes and also because plants in such zones do not rely to any significant degree on the primary production areas for a source of milk.

Zones 8 and 9 are the most deficit production zones in the Texas marketing area in terms of the relationship of production within each zone and the volume of bulk milk received at distributing plants in each zone. During May 1985, production in Zone 8 represented slightly over 13 percent of the bulk milk received at Zone 8 plants. In Zone 9, production represented just over 28 percent of the milk received at distributing plants. During October 1985, when the supply/demand relationship for the Texas market was tighter than in May, Zone 8 production represented about 11.5 percent of bulk milk received at distributing plants. For Zone 9, production represented about 24 percent of bulk milk receipts. In contrast, Zone 1 is virtually surrounded by the heavy northern production areas of the market. In terms of the relationship between Zone 1 production and distributing plant receipts, production represented over 138 percent of bulk receipts during May and about 116.5 percent of bulk receipts at distributing plants during October. In addition, a substantial amount of milk is produced to the southwest of Dallas in counties in Zone 3 of the marketing area that are about the same distance from portions of the Dallas/Fort Worth area as is the northeast production area around Sulphur Springs. In Zones 3, 5, and 7, which were combined to avoid revealing confidential data, production represented about 817 percent of bulk milk received at distributing plants in such zones during May, and over 709 percent of receipts during October.

As a result of the relationship of production to receipts, plants in Zones 8 and 9 must reach out substantial distances to obtain sufficient supplies of milk for fluid use. The milkshed for the Beaumont segment of Zone 8 extended just over 153 miles from Beaumont during October 1985 in terms of the weighted average distance of all milk shipments. However, for the major Houston segment of Zone 8, the weighted average distance from which milk was obtained was 251 miles. Also, more than 53 percent of the milk obtained by Houston plants originated more than 200 miles from Houston while more than 44 percent came from more than 250 miles from Houston. Just over 14 percent of the milk came from 351 or more miles from Houston. The milkshed for Zone 8 thus extends to and beyond the Sulphur Springs (Hopkins County) and Stephenville (Erath County) production areas of the market which are 253 and 267 miles, respectively, from Houston. With respect to Zone 9, the milk shipment weighted average distance was about 186 miles, with just over 48 percent of the milk being obtained from over 200 miles from San Antonio. Only about three percent of the milk came from beyond 351 miles from San Antonio, indicating that the milkshed extends to the Stephenville area (205 miles from San Antonio) but does not extend to any appreciable degree to the Sulphur Springs area (335 miles from San Antonio). Also, in terms of the change in the sources of milk over time, the milkshed for Zones 8 and 9 has shifted northward to a significant degree between 1961 and 1985.

In contrast to Zones 8 and 9, segments of the Zone 1 area were able to obtain sufficient milk supplies from the nearby production areas. Distributing plants in the Dallas, Ft. Worth, and Grandview areas of Zone 1 obtained milk, on a weighted average distance basis, from 105, 45, and 17 miles, respectively, from such plant locations. Very little milk was received from beyond 150 miles from distributing plants in Zone 1.

Producers in the major Texas production areas supply the fluid milk needs of distributing plants located in the three major consumption areas of the market. As stated previously, these major production areas are centered around the Sulphur Springs and Stephenville areas which are northeast and southwest of Dallas. Producers in these areas incur different hauling costs and provide varying degrees of service to handlers depending on the different distances involved in supplying the alternative outlets. Stephenville is about 97 miles from Dallas and 67 miles from Ft. Worth. Also, Stephenville is 205 miles from San Antonio. Based on the three-cent-per-10-mile hauling cost, which is a conservative estimate of hauling costs used to align prices among plants on a north-south axis, a total hauling cost of 63 cents would be reflected between Stephenville and San Antonio. However, Stephenville area producers also supply distributing plants in Zone 1. Consequently, only the additional mileage involved in supplying San Antonio versus Dallas/Ft. Worth, need be reflected in the Zone 9 location adjustment to cover the additional service provided by producers in supplying Zone 9 plants. San Antonio is 108 miles further from Stephenville than is Dallas which indicates that a 33-cent location adjustment at Zone 9 would cover the additional hauling cost and service. Ft. Worth, which is west of Dallas, is about 67 miles from Stephenville. On this comparison, there is an additional 138 miles to San Antonio, or a 42-cent difference in the cost of supplying the alternative outlets. Consequently, the current 42-cent location adjustment for Zone 9 represents an appropriate measure of the location value of milk in this major

southern consumption center relative to the Dallas/Ft. Worth area.

The Stephenville area is also a major source of supply for plants in Zone 8. Houston is 62 miles further from Stephenville than is San Antonio which indicates that a greater cost is incurred by Stephenville area producers to supply Houston than San Antonio. On this basis, the location adjustment for Zone 8 should be 21 cents greater than at San Antonio, or a 63-cent location adjustment relative to Zone 1.

Houston is nearer to Sulphur Springs than to Stephenville. Consequently, the Zone 8 location adjustment should be based on the nearer primary production area. Otherwise, the Zone 8 location adjustment would be in excess of the value of the service provided by producers who are nearer to Houston than Stephenville area producers.

Sulphur Springs is about 79 miles from Dallas and 253 miles from Houston. Consequently, producers in this major production area have to ship milk an additional 174 miles to supply Houston area plants versus plants in the Dallas area. This indicates that a 54-cent location adjustment for Zone 8 represents the appropriate location value of milk relative to milk delivered to Dallas.

The location adjustments for Zones 8 and 9, relative to the Class I differential value in Zone 1, are based on a three-cent-per-10-mile bulk milk hauling rate from north to south to reflect the greater service provided by producers supplying more distant southern alternative outlets. Although San Antonio is further south from Dallas than is Houston, San Antonio is nearer to the primary northern production areas that must be relied on for a source of milk. Consequently, the location adjustment for Zone 9 is appropriately lower than for Zone 8 because of the lesser costs incurred in supplying Zone 9. In addition, since San Antonio is west of Houston, a lower price at San Antonio is more consistent with the mandated price alignment change which establishes a price incentive for west to east as well as north to south movements of milk.

The price relationship among Zones 1, 8, and 9 establishes the primary pricing structure for the Texas market. This pricing structure recognizes both the primary consumption and production areas in the market. Consequently, location adjustments in intervening zones must be related to the values of milk in the major metropolitan areas of the market. However, prior to considering the location adjustments in intervening zones, additional consideration is directed to other proposals concerning Zone 8 of the marketing area.

Counter proposals that would establish a greater or lesser location adjustment than the current 54-cent adjustment (which is reaffirmed for reasons previously set forth) must be denied. The higher plus adjustments are based on the contention that a greater proportion of the additional hauling costs that are incurred by producers to supply Zone 8 relative to supplying other zones should be reflected in the Zone 8 location adjustment. The higher adjustments are based on greater hauling costs and distances than are reflected in the analysis to derive the 54-cent location adjustment. A higher location adjustment is not totally unreasonable in that it would result in Zone 8 handlers paying a greater proportion of the actual hauling costs that are incurred in shipping milk to Houston. However, it is not intended that total hauling costs at any one point in time be reflected at each plant location. Hauling costs vary over time among haulers and on the basis of the actual distances that milk is shipped. Consequently, location adjustments reflect an average situation. Thus, location adjustments should represent a conservative estimate of current hauling costs. The three-cent rate used to establish location adjustments on a north-south basis in the Texas market, as well as Federal order markets to the north, represents a conservative estimate of actual hauling costs incurred in shipping bulk milk. Such rate promotes continued incentives for hauling efficiencies. It is also consistent with the concern expressed over whether declines in fuel prices were reflected in hauling costs portrayed on the record. In reflecting an average experience, location adjustments that exceed transportation costs would establish incentives to ship milk to obtain hauling profits.

Schepps filed exceptions to the failure of the tentative decision to estsblish a greater plus location adjustment than 54 cents for Zone 8. Schepps contends that a greater plus adjustment is supported by record evidence and is warranted to assure that Zone 8 handlers would pay a greater proportion of the actual hauling costs that are incurred in shipping milk to plants in Zone 8. The handler also argues that since milk is shipped an average of 251 miles to supply plants in the Houston area, the transportation cost is about 75 cents per hundredweight based on a hauling rate of 3 cents per 10 miles. In addition, Schepps contends that a plus adjustment in excess of 54 cents is supported by the testimony of cooperative associations. Schepps cites testimony of cooperative associations concerning the incremental costs to supply Houston area plants of 75 cents from the Sulphur Springs area and a cost of at least 64 cents from the Stephenville area.

It is noted that the plus 54-cent Zone 8 location adjustment, which reflects the additional cost of hauling milk to Houston versus alternative fluid outlets in Zone 1 from the Sulphur Springs procurement area, is less than the costs reflected by the testimony of cooperative associations. Although these differences cannot be totally explained, the economic rationale previously set forth in this decision to establish the 54-cent adjustment has not been contested by Schepps. In addition, the decision sets forth hauling efficiency concerns and price alignment considerations with respect to markets to the east which tend to establish limitations to a greater plus location adjustment for Zone 8.

The proposals to reestablish a 36-cent location adjustment for Zone 8 is totally unreasonable in view of current hauling costs and the increases in the Class I differentials mandated by the Food Security Act of 1985 that are intended to recognize increases in hauling costs that were not previously recognized under Federal milk orders. The contention of Zone 8 handlers that sufficient supplies of milk were received with a 36-cent adjustment merely indicates that such handlers were able to transfer the additional hauling cost incurred in shipping milk to Zone 8 to the producers who supply plants in Zone 8. Since AMPI supplies Zone 8 almost exclusively over long distances, the absorption of the additional, unrecovered transportation costs resulted in inequities between AMPI producers and other producers in the nearby northeast Texas procurement area who provide no service in shipping milk long distances to the major deficit zone consumption area. In addition, a 36-cent location adjustment would not even approach the value of the service received by Zone 8 handlers, resulting in inequities between Zone 8 handlers and handlers in other areas who pay a greater proportion of the value of the transportation service.

Borden, Carnation, Southland and Hygeia excepted to the plus 54-cent location adjustment for Zone 8 and urged that the proposed 36-cent location adjustment be adopted. The handlers contend that the only basis offered to support the 54-cent adjustment was generalized testimony that transportation costs had increased and that a previous decision on a prior

record was correct. The handlers also contend that the adjustment discriminates against Houston dealers since all surrounding dealers pay less for milk even though the cost of transporting bulk milk to such dealers reflects the same rate per 10 miles as the cost of hauling milk to Houston. The handlers further contend that there was no evidence indicating a problem in supplying milk to Houston with a 36-cent location adjustment.

First of all, there is a substantial amount of testimony indicating that the cost of hauling bulk milk is $1.60 per loaded mile. A large number of witnesses representing various parties, including one of the excepting handlers, confirmed such fact. When a cost figure is virtually undisputed by any witness, a much greater degree of significance is attached to such testimony than the connotation associated with the "generalized testimony" terminology used by the excepting handlers. In addition, there is substantial testimony and evidence in the record concerning the appropriate location value of milk for Zone 8 relative to other zones in the marketing area.

In this connection, the distance that milk must be hauled, as well as the 10-mile hauling rate, must be considered with respect to this issue. The fact that the hauling rate may be the same for all handlers is of much less importance without a consideration of the location of the primary production areas and the varying distances involved in supplying alternative fluid outlets. As previously set forth in this decision, the Zone 8 location adjustment is based on the greater distance that milk must be moved from the market's primary production areas to supply Zone 8 relative to the distances involved in supplying plants in other zones that are nearer to such production areas. Consequently, these same considerations (i.e., hauling rate and distance) are instrumental in determining the appropriate price relationships among Zones 1, 8, and 9 as well as the price relationships with intervening zones. As a result, the plus 54-cent location adjustment does not discriminate against Zone 8 handlers. Such adjustment, which reflects a reasonable value of milk relative to plants in other zones on the basis of the hauling rate and the distance involved, promotes a greater degree of equity among handlers than a 36-cent adjustment would provide. A 36-cent adjustment would undervalue milk delivered to Zone 8 relative to the value of milk delivered to plants in other zones. Also, it is not correct that prices which apply to all surrounding dealers are less than the Zone 8 prices. The plus location adjustments at other more southern zones are in excess of the Zone 8 location adjustment. Also, the location adjustment at plants in Zone 9 that are located in San Antonio and to the south and west of Zone 8 is less than the Zone 8 adjustment because San Antonio is considerably closer to the Stephenville production area than is Houston.

Despite the handlers' claim in exceptions, there are problems associated with supplying milk to handlers in Zone 8 that would be intensified by reducing the plus location adjustment. Zone 8 is a major consumption center to which substantial supplies of milk must be shipped regularly over considerable distance on a daily basis to furnish fluid milk needs. To the extent that the location adjustment does not reflect the additional cost incurred by producers in supplying Zone 8, relative to the lesser costs incurred in supplying nearer plants, producers are not adequately compensated for the transportation service provided. Consequently, inequities develop between those producers who supply such zone versus those producers who provide no service in shipping milk long distances to supply this deficit consumption area. In addition, inequities develop among those handlers who pay a greater share of the transportation service versus those who pay a lesser share. As previously set forth in this decision, a reduction of the Zone 8 location adjustment to plus 36 cents would cause further inequities both among producers and handlers.

The 72-cent and 36-cent location adjustments would result in $4.00 and $3.64 Class I differential values in Zone 8. Both would represent a misalignment of Class I differentials on an east-west axis. A $3.82 Class I differential as a result of a 54-cent location adjustment represents a reasonable alignment with the mandated $3.85 Class I differential at New Orleans and the $3.78 Class I differential at Lake Charles adopted under a different proceeding involving the Greater Louisiana order.

Montgomery County should not be removed from Zone 8 and placed in a separate pricing zone at this time as proposed. Kroger is in the process of building a new plant at Conroe to service fluid milk retail outlets in Zone 8 and other southern Texas and Louisiana territory. The plant is expected to begin operating by April 1987. Kroger proposed that the price at its new plant should be 10 cents less than the price at Houston because it is 39 miles north of Houston and nearer to northern production areas.

Based simply on the distance between Conroe and Houston, there is some economic merit to the proposal. However, the proposal seeks a refinement of establishing a location adjustment on the basis of the location of a single plant, which goes far beyond the zone pricing structure used historically in the Texas market. Under a zone pricing structure, prices are established at city locations relative to other consumption centers. The area is then expanded to encompass additional areas in the proximity of the city within which plants are located. Such plants would be expected to compete with each other, both for sales in the major consumption area and for supplies of milk. Recognition of a precise plant location (in fact Conroe is not a precise plant location) relative to a major city in a zone would nullify the zone pricing structure applicable to all other distributing plants regulated under the order. For example, Houston and Dallas cover a substantial amount of territory. Thus, plants within such cities could be further from each other than Conroe is from Houston. Consequently, Conroe must be viewed in terms of its proximity to the rest of the territory in Zone 8 to determine whether Montgomery County should be in a separate pricing zone.

Montgomery County has been included in Zone 8, and in the same price zone as Houston, at least since the Texas marketing area was formed in 1975. It is also not the northernmost located county in Zone 8. Also, it appears that Conroe is only about 16 miles north of the northern boundary of Harris County and 20 miles north of the Houston city limits. In addition, a portion of the City of Houston extends into Montgomery County and Montgomery County is a part of the Houston Primary Metropolitan Statistical Area. In addition, Beaumont (Jefferson County) is also in Zone 8 located northeast of Houston nearer to northern production areas. It is noted that Beaumont is substantially closer to milk supplies than is Houston. Conroe, relative to Beaumont, is only 6 to 8 miles further to the north. Consequently, in view of its proximity to the rest of the territory in Zone 8, Montgomery County should not be removed from Zone 8.

As previously stated, the proposed location adjustment changes for Zones 2, 3, 4, 5 and 7 must be viewed in terms of the primary pricing structure for the major metropolitan portions of the market. The mandated Class I differential is established for Zone 1 while the location adjustments for

Zones 8 and 9 are based on the difference in the cost of hauling milk to such deficit zones relative to hauling milk to Zone 1. Location adjustments in the intervening zones should be aligned with prices to the south since milk that is shipped to the deficit southern Zones 8 and 9 either originates in or must pass through this intervening territory. Consequently, use of the three-cent alignment rate through this territory establishes whether the proposed location adjustment changes should be adopted.

Austin, in Zone 7, is 78 miles northeast of San Antonio in Zone 9. A three-cent alignment rate indicates that the Zone 7 location adjustment should be 18 to 24 cents less than Zone 9, depending on whether the mileage over the entire northeast direction or just the northern direction is utilized. Consequently, the proposed plus 39-cent location adjustment for Zone 7, which is only three cents less than San Antonio, should be denied since the current 30-cent Zone 7 location adjustment represents a more reasonable alignment between the two zones. A denial of the increase in the Zone 7 location adjustment also requires a denial of the proposed location adjustment for Zone 3, which is directly north of Zone 7. Adoption of the proposed location adjustment for Zone 3, in conjunction with a denial of the Zone 7 proposed increase, would reduce the price difference between Zones 3 and 7 while a three-cent alignment rate indicates that the price difference should increase between the two zones.

The proposed increases in the plus location adjustments for Zones 4 and 5 of four and 10 cents, respectively, should also be denied since the current location adjustments for such zones are already aligned on a three-cent rate with prices to the south in Zone 8. This is based on the 120 miles between Lufkin in Zone 4 and Houston and the 102 miles between Bryan in Zone 5 and Houston. The current Zone 4 plus location adjustment is 36 cents lower than Zone 8 while the Zone 5 adjustment is 34 cents lower than Zone 8.

Zone 2 is north of Zone 4 and currently the Zone 2 price is 12 cents less than Zone 4. The 90 miles between Tyler in Zone 2 and Lufkin indicates a 27-cent price difference between the two zones. Consequently, the proposal to eliminate the current six-cent location adjustment in Zone 2 should be adopted to improve the north-south alignment between Zones 2 and 4. In addition, removal of the plus adjustment provides for an east-west alignment of pricing between Shreveport and Dallas. Texarkana, which is outside the Texas marketing area, is directly north of Zone 2. Continued use of the three-cent hauling alignment rate on a north-south axis indicates a location adjustment of 21 cents based on the distance from Shreveport to Texarkana. Consequently, the minus 20-cent location adjustment proposed for the Texarkana area (Bowie and Cass Counties in Texas and Little River and Miller in Arkansas) should be adopted.

Zone 1 of the marketing area has historically included the major Dallas/Ft. Worth population center as well as a major production area in which two AMPI manufacturing plants are located that are pooled under the order as balancing plants. Zone 1 is the base zone for the market in which the mandated $3.28 Class I differential applies. The Southland proposal would split the consumption and production areas of the current base zone into two different pricing zones. The proposed minus 18-cent location adjustment would apply in the production area to provide an additional incentive for producers to ship milk to distributing plants in the consumption areas rather than shipping milk to manufacturing plants in the production area.

There is one plant in the proposed minus 18-cent location adjustment zone that operated as a distributing plant during June through December of 1985, and as a producer-handler during other months. Consequently, it would appear that adoption of the proposal would have a minimal impact on the pooled value of milk since little, if any, milk in Class I use would be priced at the lower level. However, there could be a substantial change in returns to producers.

The concept advanced by the proposal appears to be reasonable in terms of a price incentive under the order for those producers who would incur a greater cost in shipping milk to Dallas than to manufacturing plants in the production area. However, Southland indicated that prices paid to its producers would probably continue to be the same regardless of whether their producers' milk was shipped to plants in Dallas or to Southland's Class II nonpool plant at Sulphur Springs. Apparently, competitive pressures among handlers for supplies of milk require uniform pay prices to producers. Under such a situation, it is difficult to comprehend how the 18-cent lower price under the order at Sulphur Springs relative to Dallas would provide a price incentive for milk to move minimal additional distances to Dallas.

The competitive situation to return uniform pay prices to producers in the heavy northeast procurement area would have a substantial impact on AMPI because the cooperative operates two manufacturing plants in the area. Substantial quantities of milk are manufactured at the two plants when it is not needed for fluid use at distributing plants. These plants balance the fluid milk needs of the market with milk receipts varying substantially on a seasonal basis. A minus 18-cent location adjustment would reduce the blend price at the Sulphur Springs plant operated by AMPI 18 cents below the blend price applicable at a supply plant operated by another cooperative at Yantis just 16 miles south of Sulphur Springs. This difference in blend prices would result in disorderly milk procurement competition in the northeast production area.

In addition, although it makes economic sense for manufacturing plants to be located in heavy producing areas where most of the weekly and seasonal reserve supplies would be expected to be located, supplies from other higher-priced zones are also received at the two plants when it is in excess of weekly and seasonal fluid milk needs. No transportation costs are recovered under the order on such necessary movements of milk. Thus, any minus location adjustment at these manufacturing plants would amount to an added price deterrent to the movement of reserve milk supplies in other areas of the market to these manufacturing outlets.

Since the proposed Zone 1–B would disrupt procurement competition and adversely impact the movement of reserve supplies to manufacturing outlets there would need to be a compelling basis to adopt such proposal. The record does not reveal a compelling need to reduce the price 18 cents per hundredweight at plants in this 10-county area. Certainly, it is not needed to conform order pricing to the mandated Class I differentials. Although the concept of a price adjustment between the production area and Dallas to encourage the movement of milk for fluid use has merit, the record does not reveal any significant problem as a result of movements of milk to Dallas handlers. Consequently, the proposal is denied.

Southland and Hygeia excepted to the denial of the proposed Zone 1–B. The handlers requested that the arguments presented in their post-hearing brief concerning this issue be incorporated as an exception without further elaboration. Since no further arguments

were advanced, no additional consideration of the issue is necessary as all relevant factors included in testimony and briefs were previously considered in denying the proposal.

For Zone 1–A, which is northwest of Dallas, the minus location adjustment should be increased from 12 to 25 cents. This change is necessary because of the increase in the difference between the Texas and Southwest Plains order Class I differentials on May 1, 1986. The minus 25-cent location adjustment basically splits the difference between the 51-cent Class I differential difference between Oklahoma City and Dallas for territory that is approximately half way between the two cities. Also, the greater minus adjustment better reflects the change in the relationship of Class I differentials between the Texas order and the Lubbock-Plainview, and Texas Panhandle orders to the west and northwest of Dallas. Prior to May 1, the Texas order Class I differential was 10 cents less than the Lubbock-Plainview differential to the west and seven cents greater than the Texas Panhandle differential to the northwest. Effective May 1, the Texas order differential exceeds the differential in the other two orders by 79 cents. This reduction in Class I differentials to the west and northwest represents an alignment rate of 2.5 cents between Dallas and Lubbock and 2.2 cents between Dallas and Amarillo. The minus 25-cent location adjustment for Zone 1–A represents an alignment rate of only 1.8 cents between Dallas and Wichita Falls. Consequently, the 25-cent location adjustment represents a better price relationship than the current 12-cent location adjustment.

With respect to Zone 6 of the marketing area, Dean Foods, Inc., proposed that the current plus 25-cent location adjustment be changed to a minus 50-cent adjustment (modified to minus 25 cents at the hearing). In addition, Dean proposed that the current minus 15-cent location adjustment applicable in eastern New Mexico under the Rio Grande Valley order be eliminated.

The Rio Grande Valley order specified a $2.35 Class I differential prior to May 1, 1986, and a continuation of such differential was mandated by the Food Security Act of 1985. This differential is applicable through the relatively more populated areas in central New Mexico and El Paso County, Texas. A minus 15-cent location adjustment applies to the relatively more rural production areas of eastern New Mexico. Consequently, the order's pricing structure reflects the need for milk to move from eastern New Mexico to consumption centers in central New Mexico and El Paso. Also, New Mexico is a surplus milk production state.

Prior to May 1, the Texas order and Rio Grande Valley order Class I differentials were essentially the same. Since May 1, the Texas order differential has been 93 cents higher than the Rio Grande Valley order differential. Thus, Dean's proposals were an attempt to lessen the substantial change in the price relationship between the two orders.

The proposed 15-cent increase in the value of milk in eastern New Mexico should not be adopted. Such a pricing change would be totally inconsistent with the intent of Congress (which mandated no price change), the supply/demand relationship within the marketing area, and the pricing structure of the market. Consequently, to the extent that the change in the price relationship between the two markets should be recognized, it must be done with respect to the location adjustment in Zone 6 under the Texas order.

Much of the testimony by Dean to support its proposal, as well as the testimony in opposition to the proposal by other handlers, centered on the effects that a price change would have on the ability of plants to compete with each other for fluid milk sales. This has essentially nothing to do with the issue of the appropriate location adjustment at Dean's San Angelo distributing plant in Zone 6. The issue is whether the changes in the Class I differential relationship between the two orders has modified the price that is necessary to attract a supply of milk to San Angelo.

For the most part, supplies of milk for San Angelo originate from Zone 6 in the vicinity of the San Angelo plant and from the east in the Stephenville area. To a lesser extent, supplies originate from the west in New Mexico. Apparently, the current plus 25-cent adjustment reflects the higher location value of milk at San Angelo to attract milk from the east and west (and to some extent, the north) because of the distances involved.

The mandated 96-cent increase in the Texas order Class I differential in conjunction with no change in the Rio Grande Valley order differential obviously establishes an incentive for west to east movements of milk in this region of the country. In addition, the change in the relationship between the Texas and Lubbock-Plainview orders also contemplates such movements. The lower value of milk to the west also indicates that production in such areas is more readily available as a reserve supply of milk for the Texas market.

A $2.35 Class I differential value at El Paso reflects a $3.55 value at San Angelo over the 400 miles between the two cities and a three-cent per 10 miles hauling rate. However, from Hobbs, New Mexico (Lea County) a $2.83 value is reflected at San Angelo over the 210 miles and the $2.20 Class I differential value in Lea County. Consequently, some reduction of the location adjustment at San Angelo without jeopardizing the supply of milk for such location appears reasonable.

Zone 6 covers a large geographic area that extends from New Mexico on the west to Zone 3 of the Texas order on the east. An additional distributing plant is located in Zone 6 in Brown County, which is adjacent to the heavy milk producing counties in the Stephenville area. Thus, any price change in Zone 6 is limited to some extent by the proximity of such plant to the heavy milk producing area of the market. It would not appear that the value of milk in Brown County need be any higher than the Zone 1 price to attract milk from this heavy milk producing area. Consequently, the plus 25-cent location adjustment should be eliminated for Zone 6. Elimination of the plus adjustment appears to be as much of a pricing change that can be made at this time to reflect the changed price relationship. Also, application of the $3.28 differential at San Angelo is within the range of the value of milk at such location based on New Mexico sources of supply.

Foremost excepted to the removal of the plus 25-cent location adjustment for Zone 6. Foremost indicates that the San Angelo plant receives substantial supplies of milk from the same procurement area as other handlers who are nearer to that source of supply. Consequently, Foremost contends that the 25-cent plus adjustment should continue to apply to cover the greater cost of hauling milk to San Angelo versus the cost of hauling milk to plants that are nearer to the same source of supply. Foremost's exceptions, however, fail to recognize that supplies of milk located to the west of San Angelo now represent an alternative supply source because the value of such milk has been reduced relative to eastern supplies. This price relationship change is clearly set forth previously in this decision and must be recognized in the Zone 6 location adjustment.

The location adjustment provisions of the order for territory outside the marketing area (except for the Texarkana area that was discussed

previously) should be amended to recognize the value of milk in such areas established under other Federal orders. This procedure, which is used to a limited extent, should be expanded to include plants located in New Mexico, Oklahoma, Arkansas, and parts of Kansas and Missouri. No location adjustments should be applied to plants in Louisiana, as was proposed and as is currently provided under the order since prices in Louisiana are about the same as those in Texas.

This procedure was proposed by AMPI, except for New Mexico, and by Southland/Hygeia, but to a lesser extent. With respect to New Mexico, AMPI proposed that no location adjustment be applied. This would result in the application of the Texas order Zone 1 blend price being applied to milk received at New Mexico manufacturing plants even though the location value of milk in New Mexico (in terms of the difference between the Class I differentials) is 93 cents less than under the Texas order. Such proposal is totally inconsistent with the mandated differentials and the rest of AMPI's proposal. Southland's proposal would base location adjustments in New Mexico on mileage from Dallas at a rate of 2.2 cents per 10 miles. Such proposal would recognize the declining value of milk to the west. However, at this time, it is not necessary to go beyond recognition of the value of milk established in New Mexico under the Rio Grande Valley order.

Federal orders price milk on the basis of where it is received. Thus, in surrounding territory, the location value of milk is established under other orders. In the event that plants in surrounding territory become associated with the Texas market, the price at such plant should not change as a result of a change in regulation. Otherwise, milk would be priced on the basis of where it is sold rather than on the basis of where it is received.

In order to carry out this procedure, the order language is being shortened and simplified to avoid a specific listing of counties and location adjustments for such areas. For example, the order language specifies that for plants in the Southwest Plains marketing area, the location adjustment is the difference between the Texas order Class I price and the Class I price applicable at such plant under the Southwest Plains order. However, with respect to the Southwest Plains order, additional territory in southwest Missouri is included. This is because there are plants in such area that are regulated under the Southwest Plains order.

For other areas outside Texas and the marketing area, location adjustments should be established on the basis of mileage from Dallas at the rate of 2.2 cents per 10 miles. Both the 2.1 and 2.2 rates proposed fall within the range of the alignment rates with other Federal order markets to the north. However, most of these markets reflect a rate that is substantially in excess of 2.2 cents. Consequently, the higher rate should be used.

For territory in southwest Texas that is outside any marketing area, the price applicable at any plant should be the price that applies at the nearer of San Angelo, San Antonio or Corpus Christi. This procedure is currently used and comports with the proposals to include certain territory in southwest Texas in designated pricing zones. Consequently, the current procedure is continued, although Midland is dropped as a basing point since the same price applies at San Angelo.

The above procedure, however, should be modified with respect to a 16-county area of southwest Texas that is outside any marketing area and generally situated between San Angelo and El Paso. A minus location adjustment, at the rate of 2.2 cents per 10 miles from San Angelo, should apply to plants located in such area as urged in exceptions filed by Southland and Hygeia.

Southland and Hygeia contend that a failure to adopt a minus location adjustment in this area greatly undermines the adoption of the 93-cent location adjustment for Texas order producer milk received at El Paso. They contend that an incentive would be created to build plants in these southwest Texas counties to take advantage of the 93-cent price difference between El Paso and other nearby southwest Texas counties.

Although there are no plants or current marketing problems associated with this area, the modification should be adopted in recognition of the substantial mandated change in the price relationship between the Texas and Rio Grande Valley orders. Since May 1, 1986, the Rio Grande Valley order Class I differential has been 93 cents less than the Texas differential. It appears reasonable to establish minus location adjustments in southwest Texas to recognize the mandated declining value of milk from east to west in this area. San Angelo, rather than Dallas, should be used as a basing point to compute location adjustments for southwest Texas at the rate of 2.2 cents per 10 miles. As a result of other location adjustment changes set forth in this decision, the price at San Angelo is the same as at Dallas. Also, San Angelo is the nearest Texas order pricing point to this area of Texas. The use of San Angelo and a 2.2-cent rate results in a reasonable alignment of prices between the Texas and Rio Grande Valley orders.

2. The need for emergency action with respect to issue No. 1

A recommended decision was omitted on the basis that the due and timely execution of the Secretary's functions required such omission so that the Class I prices that apply at various plants under the orders would be realigned on an intra-market and inter-market basis to reflect the Class I differentials mandated by the Food Security Act of 1985 that became effective on May 1, 1986. A tentative decision was issued so that interested parties would have an opportunity to file exceptions to the order amendments, which were adopted with the tentative decision, and made effective on September 1, 1986, on an interim basis.

The hearing notice indicated that evidence would be taken at the hearing to determine whether emergency marketing conditions existed to such an extent that omission of a recommended decision under the rules of practice and procedure would be warranted. There was a general consensus among the hearing participants that the location adjustment provisions needed to be amended quickly to avoid the possibility that disruptive marketing conditions would develop after the mandated Class I differentials took effect. However, most of the participants requested that a recommended decision should be issued so that interested parties would have an opportunity to file exceptions to the Department's proposed findings and conclusions.

After the hearing, three interested parties requested that the Secretary issue a temporary decision to implement the location adjustment amendments on an interim basis pending completion of the normal rulemaking procedures.

The procedure adopted accommodated the wishes of interested parties involved in this proceeding on the issue of expeditious handling. The complexity of the issues and the diversity of opinion regarding certain of the proposals under consideration

warranted the issuance of a tentative decision. This procedure implemented the location adjustment amendments at the earliest possible date and also gave interested parties an opportunity to file exceptions to the tentative decision, and thereby assisted in the Department's rulemaking process.

Ruling on Proposed Findings and Conclusions

Briefs and proposed findings and conclusions were filed on behalf of certain interested parties. These briefs, proposed findings and conclusions and the evidence in the record were considered in making the findings and conclusions set forth above. To the extent that the suggested findings and conclusions filed by interested parties are inconsistent with the findings and conclusions set forth herein, the requests to make such findings or reach such conclusions are denied for the reasons previously stated in this decision.

Determination

The findings and conclusions of this decision do not require any changes in the order provisions regulating the handling of milk in the Rio Grande Valley marketing area. It is hereby determined that this proceeding shall be terminated with respect to the Rio Grande Valley order.

General Findings

The findings and determinations hereinafter set forth supplement those that were made when the aforesaid orders were first issued and when they were amended. The previous findings and determinations are hereby ratified and confirmed, except where they may conflict with those set forth herein.

(a) The tentative marketing agreements and the orders, as hereby proposed to be amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Agricultural Marketing Agreement Act as amended;

(b) The tentative marketing agreements and the orders, as hereby proposed to be amended, will regulate the handling of milk in the same manner as, and will be applicable only to persons in the respective classes of industrial and commercial activity specified in, the marketing agreements upon which a hearing has been held; and

(c) The parity prices of milk as determined pursuant to section 2 of the Act are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the aforesaid marketing areas, and the minimum prices specified in the tentative marketing agreements and the orders, as hereby proposed to be amended, are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest.

Rulings on Exceptions

In arriving at the findings and conclusions, and the regulatory provisions of this decision, each of the exceptions received was carefully and fully considered in conjunction with the record evidence. To the extent that the findings and conclusions and the regulatory provisions of this decision are at variance with any of the exceptions, such exceptions are hereby overruled for the reasons previously stated in this decision.

Marketing Agreement and Order

Annexed hereto and made a part hereof are two documents, a Marketing Agreement regulating the handling of milk and an Order amending the orders regulating the handling of milk in the aforesaid marketing areas, which have been decided upon as the detailed and appropriate means of effectuating the foregoing conclusions.

It is hereby ordered, That this entire decision and the two documents annexed hereto, be published in the **Federal Register.** The regulatory provisions of the marketing agreement are identical with those contained in the orders as hereby proposed to be amended by the attached order which is published with this decision.

Determination of Producer Approval and Representative Period

March 1986 is hereby determined to be the representative period for the purpose of ascertaining whether the issuance of the orders, as amended and as hereby proposed to be amended, regulating the handling of milk in the Texas, Greater Kansas City, Southwest Plains and Central Arkansas marketing areas, is approved or favored by producers, as defined under the terms of the orders (as amended and as hereby proposed to be amended), who during such representative period were engaged in the production of milk for sale within the aforesaid marketing areas.

List of Subjects in 7 CFR Parts 1064, 1106, 1108, and 1126

Milk marketing orders, Milk, Dairy products.

Signed at Washington, DC, on October 30, 1986.

Karen K. Darling,

Deputy Assistant Secretary, Marketing & Inspection Services.

Order [1] Amending the Orders, Regulating the Handling of Milk in Certain Specified Marketing Areas

Findings and Determinations

The findings and determinations hereinafter set forth supplement those that were made when the orders were first issued and when they were amended. The previous findings and determinations are hereby ratified and confirmed, except where they may conflict with those set forth herein.

(a) *Findings.* A public hearing was held upon certain proposed amendments to the tentative marketing agreements and to the orders regulating the handling of milk in the aforesaid marketing areas. The hearing was held pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.), and the applicable rules of practice and procedure (7 CFR Part 900).

Upon the basis of the evidence introduced at such hearing and the record thereof, it is found that:

(1) The said orders as hereby amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(2) The parity prices of milk, as determined pursuant to section 2 of the Act, are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the said marketing areas; and the minimum prices specified in the orders as hereby amended are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(3) The said orders as hereby amended regulate the handling of milk in the same manner as, and is applicable only to persons in the respective classes of industrial or commercial activity specified in, marketing agreements upon which a hearing has been held.

Order relative to handling. It is therefore ordered that on and after the effective date hereof, the handling of milk in each of the specified marketing areas shall be in conformity to and in compliance with the terms and

[1] This order shall not become effective unless and until the requirements of § 900.14 of the rules of practice and procedure governing proceedings to formulate marketing agreements and marketing orders have been met.

conditions of the order, as amended, and as hereby amended, as follows. The provisions of the tentative marketing agreements and order amending the orders on an interim basis as contained in the tentative decision issued by the Deputy Assistant Secretary, Marketing and Inspection Services, on July 9, 1986, and published in the Federal Register on July 15, 1986 (51 FR 25539), shall be and are the terms and provisions of this order amending the orders except for a modification to § 1126.52(a)(5).

The authority citation for 7 CFR Parts 1064, 1106, 1108, and 1126 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended (7 U.S.C. 601–674).

PART 1064—MILK IN THE GREATER KANSAS CITY MARKETING AREA

In § 1064.52, paragraph (a) is revised to read as follows:

§ 1064.52 Plant location adjustments for handlers.

(a) For milk received from producers at a plant located outside the marketing area and more than 70 miles by the shortest highway distance as determined by the market administrator, from the nearer of the City Hall in Kansas City, Missouri, or Topeka, Kansas, which is classified as Class I milk or assigned Class I location adjustment credit pursuant to paragraph (b) of this section, the price computed pursuant to § 1064.50(a) shall be reduced by a per hundredweight rate of 1.7 cents for each 10 miles or fraction thereof that such plant is located from the nearer City Hall.

* * * * *

PART 1102—MILK IN THE FORT SMITH, ARKANSAS MARKETING AREA

Note: No amendatory action taken.

PART 1106—MILK IN THE SOUTHWEST PLAINS MARKETING AREA

1. Section 1106.2 is revised to read as follows:

§ 1106.2 Southwest Plains marketing area.

The "Southwest Plains marketing area", hereinafter called the "marketing area", means all territory within the boundaries of the following counties, and all territory occupied by government (Municipal, State or Federal) reservations, installations, institutions, or other similar establishments if any part thereof is within any of the listed counties:

Zone I.—In the State of Oklahoma

Caddo	Lincoln
Canadian	McClain
Cleveland	McIntosh
Coal	Okfuskee
Garvin	Oklahoma
Grady	Pittsburg
Haskell	Pontotoc
Hughes	Pottawatomie
Latimer	Seminole
LeFlore	Sequoyah

Zone II.—In the State of Oklahoma

Atoka	Johnston
Bryan	Kiowa
Carter	Love
Choctaw	Marshall
Comanche	McCurtain
Cotton	Murray
Greer	Pushmataha
Harmon	Stephens
Jackson	Tillman
Jefferson	

Zone III.—In the State of Oklahoma

Adair	Major
Alfalfa	Mayes
Beaver	Muskogee
Beckham	Noble
Blaine	Nowata
Cherokee	Okmulgee
Cimarron	Osage
Craig	Ottawa
Creek	Pawnee
Custer	Payne
Delaware	Roger Mills
Dewey	Rogers
Ellis	Texas
Garfield	Tulsa
Grant	Wagoner
Harper	Washita
Kay	Washington
Kingfisher	Woods
Logan	Woodward

Zone IV.—In the State of Kansas

Allen	Labette
Barber	Marion
Barton	McPherson
Bourbon	Montgomery
Butler	Neosho
Chautauqua	Pawnee
Cherokee	Pratt
Comanche	Reno
Cowley	Rice
Crawford	Rush
Edwards	Russell
Ellis	Sedgwick
Harper	Stafford
Harvey	Sumner
Kingman	Wilson
Kiowa	

In the State of Missouri

Barton	Newton
Jasper	Vernon

Zone V.—In the State of Kansas

Clark	Lane
Finney	Meade
Ford	Morton
Gove	Ness
Grant	Scott
Gray	Seward
Greeley	Stanton
Hamilton	Stevens
Haskell	Trego
Hodgeman	Wichita
Kearny	

2. In § 1106.52, paragraph (a) is revised to read as follows:

§ 1106.52 Plant location adjustments for handlers.

(a) For milk received at a plant from producers or a handler described in § 1106.9(c) and which is classified as Class I milk without movement in bulk form to a pool distributing plant at which a higher Class I price applies, the price specified in § 1106.50(a) shall be adjusted by the amount stated in paragraphs (a) (1) through (9) of this section for the location of such plant:

(1) For a plant located within one of the zones set forth in § 1106.2, the adjustment shall be as follows:

	Adjustment per hundredweight
Zone I	No Adjustment.
Zone II	Plus 23 cents.
Zone III	Minus 18 cents.
Zone IV	Minus 47 cents.
Zone V	Minus 27 cents.

(2) For a plant located in any of the following Kansas counties, the adjustment shall be as follows:

(i) *Minus 85 cents.* Anderson, Atchison, Brown, Chase, Clay, Cloud, Coffey, Dickinson, Doniphan, Douglas, Franklin, Geary, Jackson, Jefferson, Johnson, Leavenworth, Linn, Lyon, Marshall, Miami, Morris, Nemaha, Osage, Ottawa, Pottawatomie, Republic, Riley, Saline, Shawnee, Wabaunsee, Washington and Wyandotte.

(ii) *Minus 47 cents.* Elk, Greenwood and Woodson.

(iii) *Minus 27 cents.* Cheyenne, Decatur, Ellsworth, Graham, Jewell, Lincoln, Logan, Mitchell, Norton, Osborne, Phillips, Rawlings, Rooks, Sheridan, Sherman, Smith, Thomas and Wallace.

(3) For a plant located in the State of Missouri, the adjustment shall be as follows:

(i) *Minus 58 cents.* In the county of Barry, Butler, Carter, Cedar, Christian, Crawford, Dade, Dallas, Dent, Douglas, Dunklin, Gasconade, Greene, Howell, Iron, Laclede, Lawrence, Madison, Maries, McDonald, Mississippi, New Madrid, Oregon, Ozark, Pemiscot, Phelps, Polk, Pulaski, Reynolds, Ripley, Scott, Shannon, Stoddard, Stone, Taney, Texas, Wayne, Webster or Wright.

(ii) *Minus 76 cents.* In the county of Jefferson, St. Charles, or St. Louis or in the city of St. Louis.

(iii) *Minus 85 cents.* In any other county that is outside the marketing area and also outside the designated pricing area described in paragraph (a)(3)(i) or (a)(3)(ii) of this section.

(4) For a plant located in the State of Arkansas, the adjustment shall be the difference (plus or minus) between the

applicable Class I price effective at such plant location under the Central Arkansas order (Part 1108) and the Class I price specified in § 1106.50(a).

(5) For a plant located in the State of Louisiana, the plus adjustment shall be the difference between the applicable Class I price effective at such plant location under the Greater Louisiana order (Part 1096) and the Class I price specified in § 1106.50(a).

(6) For a plant located in any of the following territory in the State of Texas, the adjustment shall be as follows:

(i) In the Texas marketing area, the plus adjustment shall be the difference between the applicable Class I price effective at such plant location under the Texas order (Part 1126) and the Class I price specified in § 1106.50(a).

(ii) In the Texas Panhandle marketing area or in Lipscomb County, Texas, the minus adjustment shall be the difference between the applicable Class I price effective at such plant location under the Texas Panhandle order (Part 1132) and the Class I price specified in § 1106.50(a).

(iii) In the Lubbock-Plainview, Texas, marketing area or in Parmer County, Texas, the minus adjustment shall be the difference between the applicable Class I price effective at such plant location under the Lubbock-Plainview, Texas, order (Part 1120) and the Class I price specified in § 1106.50(a).

(iv) In the county of Bowie or Cass, the adjustment shall be plus 31 cents.

(v) In any other territory that is outside the marketing area of any Federal order and also outside the designated pricing areas described in paragraphs (a)(6) (i) through (iv) of this section, the adjustment shall be plus 2.25 cents per hundredweight for each 10 miles or fraction thereof that such plant is from the City Hall in Oklahoma City, Oklahoma (based on the shortest hard-surfaced highway distance as determined by the market administrator).

(7) For a plant located in the Rio Grande Valley marketing area and the New Mexico counties of Catron, Colfax, Hidalgo or Union, the minus adjustment shall be the difference between the applicable Class I price effective at such plant location under the Rio Grande Valley order (Part 1138) and the Class I price specified in § 1106.50(a).

(8) For a plant located in the State of Colorado, the adjustment shall be as follows:

(i) In the Eastern Colorado marketing area or in the county of Baca, Bent or Prowers, the adjustment shall be the difference (plus or minus) between the applicable Class I price effective at such plant location under the Eastern Colorado order (Part 1137) and the Class I price specified in § 1106.50(a).

(ii) In any other territory that is outside the Rio Grande Valley marketing area and outside the designated pricing area described in paragraph (a)(8)(i), the adjustment shall be minus 77 cents.

(9) For a plant located outside the designated pricing areas described in paragraphs (a) (1) through (8) of this section, the adjustment shall be minus 18 cents plus an additional reduction of 2.25 cents per hundredweight for each 10 miles or fraction thereof that such plant is located from the nearer of the City Hall in Tulsa or Ponca City, Oklahoma (based on the shortest hard-surfaced highway distance as determined by the market administrator).

* * * * *

PART 1108—MILK IN THE CENTRAL ARKANSAS MARKETING AREA

In § 1108.52, paragraph (a) is revised to read as follows:

§ 1108.52 Plant location adjustments for handlers.

(a) For milk received at a plant from producers or a handler described in § 1108.9(c) and which is classified as Class I milk without movement in bulk form to another pool plant at which a higher Class I price applies, the price specified in § 1108.50(a) shall be adjusted by the amount stated in paragraphs (a) (1) through (6) of this section for the location of such plant:

(1) For a plant located in the State of Arkansas, the adjustment shall be as follows:

(i) In the counties of Arkansas, Clark, Cleburne, Cleveland, Conway, Crawford, Crittenden, Cross, Dallas, Desha, Faulkner, Franklin, Garland, Grant, Hot Spring, Howard, Jefferson, Johnson, Lee, Lincoln, Logan, Lonoke, Monroe, Montgomery, Perry, Phillips, Pike, Polk, Pope, Prairie, Pulaski, Saline, Scott, St. Francis, Sebastian, Sevier, Van Buren, White, Woodruff, or Yell, no adjustment shall apply;

(ii) In any county lying north of any county specified in paragraph (a)(1)(i) of this section, the adjustment shall be minus 22 cents; and

(iii) In any county lying south of any county specified in paragraph (a)(1)(i) of this section, the adjustment shall be plus 31 cents.

(2) For a plant located in the State of Oklahoma or Tennessee, no adjustment shall apply.

(3) For a plant located in the Texas county of Bowie or Cass, the adjustment shall be plus 31 cents.

(4) For a plant located in the State of Louisiana, Mississippi or Texas (except the counties of Bowie and Cass), the adjustment shall be plus 2.1 cents per hundredweight for each 10 miles or fraction thereof (rounded to the nearest cent) that such plant is located from the nearer of the County Courthouse in Forrest City, Arkansas, or the State Capitol in Little Rock, Arkansas, (based on the shortest hard-surfaced highway distance as determined by the market administrator).

(5) For a plant located in any of the following Missouri counties, the adjustment shall be minus 58 cents.

Barry	McDonald
Cedar	Ozark
Christian	Polk
Dade	Pulaski
Dallas	Stone
Douglas	Taney
Greene	Texas
Howell	Webster
Laclede	Wright
Lawrence	

(6) For a plant located outside the designated pricing areas specified in paragraphs (a) (1) through (5) of this section, the adjustment shall be minus 2.1 cents per hundredweight for each 10 miles or fraction thereof (rounded to the nearest cent) that such plant is located from the nearer of the County Courthouse in Forrest City, Arkansas, or the State Capitol in Little Rock, Arkansas (based on the shortest hard-surfaced highway distance as determined by the market administrator).

* * * * *

PART 1126—MILK IN THE TEXAS MARKETING AREA

In § 1126.52, paragraph (a) is revised to read as follows:

§ 1126.52 Plant location adjustments for handlers.

(a) For milk received at a plant from producers or a handler described in § 1126.9(c) and which is classified as Class I milk without movement in bulk form to a pool distributing plant at which a higher Class I price applies, the price specified in § 1126.50(a) shall be adjusted by the amount stated in paragraphs (a) (1) through (10) of this section for the location of such plant:

(1) For a plant located within one of the zones set forth in § 1126.2, the adjustment shall be as follows:

	Adjustment per hundredweight
Zone 1	No adjustment.
Zone 1-A	Minus 25 cents.
Zone 2	No adjustment.
Zone 3	Plus 15 cents.
Zone 4	Plus 18 cents.

	Adjustment per hundredweight
Zone 5	Plus 20 cents.
Zone 6	No adjustment.
Zone 7	Plus 30 cents.
Zone 8	Plus 54 cents.
Zone 9	Plus 42 cents.
Zone 10	Plus 53 cents.
Zone 11	Plus 66 cents.
Zone 12	Plus 75 cents.

(2) For a plant located in the Texas Panhandle marketing area or in Lipscomb County, Texas, the minus adjustment shall be the difference between the applicable Class I price effective at such plant location under the Texas Panhandle order (Part 1132) and the Class I price specified in § 1126.50(a).

(3) For a plant located in the Lubbock-Plainview, Texas, marketing area or in Parmer County, Texas, the minus adjustment shall be the difference between the applicable Class I price effective at such plant location under the Lubbock-Plainview, Texas order (Part 1120) and the Class I price specified in § 1126.50(a).

(4) For a plant located in Bowie or Cass County, Texas, the adjustment shall be minus 20 cents.

(5) For a plant located in the State of Texas that is outside the designated pricing areas described in paragraphs (a) (1) through (4) and (a)(6) of this section, the adjustment shall be the adjustment applicable at the nearer of Corpus Christi, San Angelo, or San Antonio, Texas, except that for a plant located in the Texas counties of Brewster, Crane, Crockett, Culberson, Hudspeth, Irion, Jeff Davis, Loving, Pecos, Presidio, Reagan, Reeves, Terrell, Upton, Ward, and Winkler the adjustment shall be minus 2.2 cents per hundredweight for each 10 miles or fraction thereof that such plant is located from the City Hall in San Angelo, Texas (based on the shortest hard-surfaced highway distance as determined by the market administrator).

(6) For a plant located in the Rio Grande Valley marketing area or the New Mexico counties of Catron, Colfax, Hidalgo or Union, the minus adjustment shall be the difference between the applicable Class I price effective at such plant location under the Rio Grande Valley order (Part 1138) and the Class I price specified in § 1126.50(a).

(7) For a plant located in the Southwest Plains marketing area or in the Missouri counties listed below, the minus adjustment shall be the difference between the applicable Class I price effective at such plant location under the Southwest Plains order (Part 1106) and the Class I price specified in § 1126.50(a).

Barry	McDonald
Cedar	Ozark
Christian	Polk
Dade	Pulaski
Dallas	Stone
Douglas	Taney
Greene	Texas
Howell	Webster
Laclede	Wright
Lawrence	

(8) For a plant located in the State of Arkansas, the minus adjustment shall be the difference between the applicable Class I price effective at such plant location under the Central Arkansas order (Part 1108) and the Class I price specified in § 1126.50(a).

(9) For a plant located in the State of Louisiana, no adjustment shall apply.

(10) For a plant located outside the designated pricing areas described in paragraphs (a) (1) through (9) of this section, the adjustment shall be minus 2.2 cents per hundredweight for each 10 miles or fraction thereof that such plant is located from the City Hall in Dallas, Texas (based on the shortest hard-surfaced highway distance as determined by the market administrator).

* * * * *

PART 1138—MILK IN THE RIO GRANDE VALLEY MARKETING AREA

Note: No amendatory action taken.

[FR Doc. 86-24973 Filed 11-4-86; 8:45 am]
BILLING CODE 3410-02-M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Parts 103 and 214

[Order No. 1157-86]

Powers and Duties of Service Officers; Availability of Service Records: Nonimmigrant Classes

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Proposed rule.

SUMMARY: The proposed regulation would revise the procedures and authority to withdraw approval of a school to enroll foreign students. Under the proposed regulation, a district director would have authority to withdraw school approval, with a right of appeal to the Associate Commissioner, Examinations. This would correct an existing procedure where an initial hearing is conducted outside the Service, but an appeal is taken within the Service, and would mirror procedures for granting school approval.

DATE: Comments must be received on or before January 5, 1987.

ADDRESS: Please submit written comments in duplicate to the Director, Policy, Directives and Instructions, Immigration and Naturalization Service, 425 I Street, NW., Room 2011, Washington, DC 20536.

FOR FURTHER INFORMATION CONTACT:

For General Information: Loretta J. Shogren, Director, Policy, Directives and Instructions, Immigration and Naturalization Service, 425 I Street, NW., Washington, DC 20536, Telephone: (202) 633-3048

For Specific Information: Michael J. Heilman, Associate General Counsel, Office of General Counsel, Immigration and Naturalization Service, 425 I Street, NW., Washington, DC 20536, Telephone: (202) 633-2620

SUPPLEMENTARY INFORMATION: The Immigration and Naturalization Service is proposing to revise the regulations relating to the approval of schools to enroll foreign students.

Under current regulations, a school obtains approval to enroll nonimmigrant students by filing a petition with a district director. If the petition is denied, the school may appeal to the Associate Commissioner, Examinations.

If approval is granted, the district director subsequently determines that the school has violated a condition of approval, then the district director may initiate proceedings to withdraw the approval. The school is given notice of the intent to withdraw approval and informed that it has thirty days to respond and to request a hearing before an immigration judge. A school may appeal an order withdrawing approval entered by an immigration judge to the Associate Commissioner, Examinations.

The current regulations pose two problems. First, immigration judges come within the Executive Office for Immigration Review, a body separate from the Service. There thus exists a procedure where the initial hearing is conducted outside the Service in an adversarial context, but an appeal is taken within the Service. Second, procedures for school withdrawal do not mirror those for granting school approval. This means that approval granted by the agency may not be rescinded without resort to an administrative hearing conducted outside the agency.

In light of these problems, and in light of the fact that there is no due process requirement for an adversarial hearing

prior to withdrawal of approval, the Service proposes to change the procedures relating to withdrawal. The Service believes that the standards of *Mathews V. Eldridge,* 424 U.S. 319 (1976) apply. There it was held that no trial type evidentiary hearing was required prior to termination of a benefit. For example, if the credibility or veracity of witnesses is not at issue, then documentary presentation of evidence is sufficient. In addition, the Supreme Court held that due process will be protected if the agency informs the recipient of its "tentative assessment, the reasons therefore, and provides a summary of the evidence it considers the most relevant".

The proposed regulations would meet these standards. A school will be given notice of the intent to withdraw approval, and the reasons for that action. The school will be given thirty days to respond and may request an interview with the district director.

If approval is withdrawn, the school may then appeal the decision to the Associate Commissioner, Examinations.

In accordance with 5 U.S.C. 605(b), the Commissioner of Immigration and Naturalization certifies that this rule, if promulgated, would not have a significant impact on a substantial number of small entities.

This rule is not a major rule as defined in section 1(b) of E.O. 12291.

List of Subjects

8 CFR Part 103

Administrative practice and procedure, Authority delegation.

8 CFR Part 214

Administrative practice and procedure, Schools.

Accordingly, it is proposed to amend Chapter 1 of Title 8 of the Code of Federal Regulations as follows:

PART 103—POWERS AND DUTIES OF SERVICE OFFICERS; AVAILABILITY OF SERVICE RECORDS

1. The authority for Part 103 is revised to read:

Authority: Secs. 103, 281, 343, 344, 382 and 405 of the Immigration and Nationality Act, as amended (8 U.S.C. 1101, 1103, 1351, 1454 and 1455).

2. In § 103.1, paragraph (f)(2)(ix) would be revised to read as follows:

§ 103.1 Delegations of authority.

* * * * *

(f) * * *

(1) * * *

(ix) Decisions of district directors regarding withdrawal of approval of schools for attendance by foreign students under § 214.4 of this title.

* * * * *

PART 214—NONIMMIGRANT CLASSES

3. The authority for Part 214 continues to read as follows:

Authority: Sec. 101, 103, 212, and 214 of the Immigration and Nationality Act as amended (8 U.S.C. 1101, 1103, 1182 and 1184).

4. In § 214.4 paragraph (b)–(h) would be revised to read as follows:

§ 214.4 Withdrawal of school approval.

* * * * *

(b) *Notice.* Whenever a district director has reason to believe that an approved school (system) in his/her district is no longer entitled to approval, a proceeding shall be commenced by service upon its designated official of notice of intention to withdraw the approval. The notice shall inform the designated official of the school (system) of the grounds upon which it is intended to withdraw its appoval. The notice shall also inform the school (system) that it may, within 30 days of the date of service of the notice, submit written representations under oath supported by documentary evidence setting forth reasons why the approval should not be withdrawn and that the school (system) may, at the time of filing the answer, request in writing an interview before the district director in support of the written answer.

(c) *Assistance of counsel.* The school (system) shall also be informed in the notice of intent to withdraw approval that it may be assisted or represented by counsel of its choice in preparation of its answer or at the interview.

(d) *Allegations admitted or no answer filed.* If the school (system) admits all of the allegations in the notice of intent to withdraw approval, or if the school (system) fails to file an answer within the 30 day period, the district director shall withdraw the approval previously granted and he/she shall notify the designated school official of the decision. No appeal shall lie from the district director's decision if all allegations are admitted or no answer is filed within the 30 day period.

(e) *Allegations denied.* If the school (system) denies the allegations in the notice of intent to withdraw approval, then the school (system) shall, in its answer, provide all information of evidence on which the answer is based.

(f) *Interview requested*—(1) If in its answer to the notice of intent to withdraw approval, the school (system) requests an interview, the school (system) shall be given notice of the date set for the interview.

(2) A summary of the information provided by the school (system) at the interview shall be prepared and included in the record. In the discretion of the district director, the interview may be recorded.

(g) *Decision.* The decision of the district director shall be in writing and shall include a discussion of the evidence and findings as to withdrawal. The decision shall contain an order either withdrawing approval or granting continued approval. The written decision shall be served upon the school (system), together with the notice of the right to appeal pursuant to Part 103 of this chapter.

(h) *Appeal.* An appeal shall be taken within 15 days after the service of the written decision. The reasons for the appeal shall be stated in the notice of appeal, Form I–290B and supported by a statement or brief specifically setting forth the grounds and the evidence for contesting the withdrawal of the approval.

* * * * *

Dated: October 23, 1986.

Edwin Meese, III,

Attorney General.

[FR Doc. 86–24879 Filed 11–4–86; 8:45 am]

BILLING CODE 4410–10–M

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 70 and 74

Reporting of Special Nuclear Material Physical Inventory Summary Results

Correction

In FR Doc. 86–23971, beginning on page 37578, in the issue of Thursday, October 23, 1986, make the following corrections:

1. On page 37578, third column, third line from the bottom, insert "since 1975. The objective of these amendments is to provide a regulatory basis" between "basis" and "for".

1. On page 37579, first column, under **"Background"** in the fifth line, "basic" should read "basis".

3. On page 37579, second column, first complete paragraph, second line, insert "results, IE requested an explicit regulatory basis for this physical inventory" between "inventory" and "reporting". Also in the tenth line, insert "were published for a 60-day public comment period. Comments were received" between "amendments" and "from".

4. On page 37580, first column, first line of the first paragraph, insert

"Flexibility" between "Regulatory" and "Act".

5. On page 37580, second column, first paragraph, fourth line, insert "2233" between "2232," and "2282". Also in the second paragraph, fourth line, insert "948" between "Stat." and "949".

6. On the same page and column, in § 74.17(b), in the fifth line, "From" should read "Form".

BILLING CODE 1505-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 86-NM-205-AD]

Airworthiness Directives; Aerospatiale Model ATR-42 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This notice proposes to adopt an airworthiness directive (AD) that would require modification to the pilot's seat back locking mechanism on certain flightcrew seats on Aerospatiale Model ATR-42 airplanes. This action is prompted by a report of seat back collapsing in flight. Failure of the seat reduces the pilot's ability to control the airplane.

DATES: Comments must be received no later than December 26, 1986.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Office of the Regional Counsel (Attention: ANM-103), Attention: Airworthiness Rules Docket No. 86-NM-205-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from Aerospatiale, 316 Route de Bayonne, 31060 Toulouse Cedex 03, France. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Ms. Judy Golder, Standardization Branch, ANM-113; telephone (206) 431-1967. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Office of the Regional Counsel (Attention: ANM-103), Attention: Airworthiness Rules Docket No. 86-NM-205-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

Discussion

The French Direction Générale de L'Aviation Civile (DGAC) has, in accordance with existing provisions of a bilateral airworthiness agreement, notified the FAA of an unsafe condition that may exist on certain Aerospatiale ATR-42 airplanes.

Excessive clearance between the pilot's seat back structure fork fitting and the recline unit latch pin has resulted in the inadvertent collapse of a flightcrew seat back on an Aerospatiale Model ATR-42 airplane during flight operations. Aerospatiale has issued Service Bulletin ATR 42-25-0006, dated July 21, 1986, which references IPECO Europe, Ltd. (manufacturer of the seat), Service Bulletin A001-25-22, dated June 5, 1986, which describes modification of the crew seat back structure and locking mechanism to prevent inadvertent collapse of the seat back.

The DGAC issued French Airworthiness Directive 86-78-01(B), dated May 28, 1986, to require modification of the seats in accordance with the above service bulletins. The United Kingdom Civil Aviation Authority (CAA) has classified the IPECO Europe, Ltd., service bulletin as mandatory. (The seats are manufactured in England.)

This airplane model is manufactured in France and type certificated in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement.

Since this condition is likely to exist or develop on airplanes of this model registered in the United States, an AD is proposed that would require modification of the seat back locking mechanism on crew seats manufactured by IPECO and installed on certain Aerospatiale Model ATR-42 series airplanes, in accordance with the previously mentioned service bulletins.

It is estimated that 4 airplanes of U.S. registry would be affected by this AD, that it would take approximately 3 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. Based on these figures, the total cost impact of this AD to U.S. operators is estimated to be $480.

For the reasons discussed above, the FAA has determined that this document (1) involves a proposed regulation which is not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities because of the minimal cost of compliance per airplane ($120). A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

The Proposed Amendment

PART 39—[AMENDED]

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

2. By adding the following new airworthiness directive:

Aerospatiale: Applies to Model ATR-42 series airplanes listed in Aerospatiale Service Bulletin ATR 42-25-0006, dated July 21, 1986, fitted with IPECO flight crew seats, certificated in any category. Compliance is required within 30 days after the effective date of this AD, unless already accomplished.

To prevent collapse of the pilot or co-pilot seat backs, accomplish the following:

A. Modify seats, P/N 3A063-0035, 3A063-0036, 3A063-0079, and 3A063-0080, in accordance with Aerospatiale Service Bulletin ATR 42-25-0006, dated July 21, 1986. (Reference IPECO Service Bulletin A001-25-22, dated June 5, 1986.)

B. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Northwest Mountain Region.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of modifications required by this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Aerospatiale, 316 Route de Bayone, 31060 Toulouse Cedex 03, France. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

Issued in Seattle, Washington, on October 29, 1986.

Frederick M. Isaac,

Acting Director, Northwest Mountain Region.

[FR Doc. 86-24942 Filed 11-4-86; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 86-NM-192-AD]

Airworthiness Directives, Boeing Model 747 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This notice proposes to adopt an airworthiness directive (AD) which would require inspection for minimum engagement or overlap of the side support lip that restrains the main deck unit load device (ULD), and modification if necessary, on certain Boeing Model 747 convertible and freighter series airplanes. This action is prompted by recent reports of the restraints not being adequately engaged and, in one case, movement of the cargo during flight on a freighter airplane. This action is necessary since inadequate engagement of the side support lips, if not corrected, could result in cargo movement during flight and subsequent possible degradation of controllability of the airplane.

DATES: Comments must be received on or before December 26, 1986.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Office of the Regional Counsel (Attention: ANM-103), Attention: Airworthiness Rules Docket No. 86-NM-192-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from the Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Owen E. Schrader, Airframe Branch, ANM-120S; telephone (206) 431-1923. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Office of the Regional Counsel (Attn: ANM-103), Attention: Airworthiness Rules Docket No. 86-NM-192-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

Discussion

There have been a number of recent reports of side support lips that restrain the ULD's on freighter or combi airplanes not being adequately engaged. In one case, movement of the cargo occurred during flight. The lack of adequate engagement is caused by seat track misalignment in the over-wing area between fuselage station 980 and 1500. Until the minimum restraint lip overlap is verified by inspection in accordance with the service bulletin, all forward, aft, and vertical restraints between body stations 980 and 1500, are assumed to be inoperative restraints. Lack of proper engagement could result in cargo movement during flight on a freighter or combi airplane and subsequent possible degradation of controllability of the airplane.

The FAA has reviewed and approved Boeing Alert Service Bulletin 747-53A2273, dated July 29, 1986, which describes the specific procedures to be used to inspect the side support lip that restrains the main deck unit load device, for proper engagement or overlap and modification, if necessary.

Since this condition is likely to exist or develop on other airplanes of this same type design, an airworthiness directive is being proposed which would require installation of placards, inspection of the side support lip for proper engagement or overlap, and modification, if necessary, in accordance with Boeing Service Bulletin 747-53A2273, dated July 29, 1986, or later FAA-approved revisions.

It is estimated that 23 airplanes of U.S. registry would be affected by this AD, that it would take approximately 48 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. Based on these figures, the total cost impact of this AD to U.S. operators is estimated to be $44,160 for the initial inspection.

For the reasons discussed above, the FAA has determined that this document (1) involves a proposed regulation which is not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small

entities because few, if any, Boeing Model 747 airplanes are operated by small entities. A copy of draft regulatory evaluation prepared for this action is contained in the regulatory docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

The Proposed Amendment

PART 39—[AMENDED]

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

2. By adding the following new airworthiness directive:

Boeing: Applies to Model 747 convertible and freighter series airplanes listed in Boeing Alert Service Bulletin 747-53A2273, dated July 29, 1986, certificated in any category.

To prevent inadvertent in-flight movement of main deck cargo on freighter or combi airplanes, accomplish the following, unless already accomplished:

A. Within 10 landings after the effective date of this AD, or immediately after the replacement or reinstallation of the restraint hardware, unless the requirements of paragraph B., for removal of placards, decals, or stencils, are accomplished, install suitable placards, decals, or stencils at all restraints along both left and right buttock lines (BL) 98.2, 9.8, and 1.8, between body stations (BS) 980 and 1500, that state the following:

"This restraint is inoperative. Cargo must be tied down per FAA-approved procedures."

B. Placards, decals, or stencils installed in accordance with the provisions of paragraph A., above, may be removed at each location where a determination is made in accordance with Boeing Service Bulletin 747-53A2273, dated July 29, 1986, or later FAA-approved revisions, that the restraint lip overlap meets or exceeds the minimum value specified therein, or if terminating action defined in paragraph C., below, is accomplished.

C. Terminating action for this amendment consists of the inspection of the seat track alignment and, if necessary, modification of the floor beams between body station 980 and 1480 in accordance with Section 111., Part II of Boeing Service Bulletin 747-53A2273, dated July 29, 1986, or later FAA-approved revisions.

D. An alternate means of compliance or adjustment of the compliance time, which provide an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

E. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of inspections and/or modifications required by this AD.

All persons affected by this proposal who have not already received the applicable service bulletin from the manufacturer may obtain copies upon request to the Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124-2207. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

Issued in Seattle, Washington, on October 29, 1986.

Frederick M. Isaac,

Acting Director, Northwest Mountain Region.

[FR Doc. 86-24940 Filed 11-4-86; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1, 7, 20, 25, 53, and 56

[EE-154-78]

Lobbying by Public Charities; Notice of Proposed Rulemaking

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations relating to lobbying expenditures by certain tax-exempt public charities that are described in section 501(c)(3) of the Internal Revenue Code of 1954. Changes to the applicable tax laws were made by the Tax Reform Act of 1976. The regulations will provide the organizations the guidance needed to comply with the Act, and will primarily affect organizations electing the expenditure test under section 501(h).

DATES: Written comments and requests for a public hearing must be delivered or mailed by February 3, 1987. The amendments to Parts 7, 20, 25, and 56 are proposed to be effective for taxable years beginning after December 31, 1976. Amendments to §§ 1.170A-1, 1.501(c)(3)-1, 1.501(c)(4)-1, 1.6033-2, and § 53.4945-2(a) are also proposed to be effective for taxable years beginning after December 31, 1976. Section 1.504-1 is proposed to be effective October 5, 1976. Section 1.504-2 and the amendments to § 53.4945-2(d)(1) are proposed to be effective February 3, 1987.

ADDRESS: Send comments and requests for a public hearing to: Commissioner of Internal Revenue, Attention: CC:LR:T:EE-154-78, Washington, D.C. 20224.

FOR FURTHER INFORMATION CONTACT: Paul G. Accettura of the Employee Plans and Exempt Organizations Division, Office of the Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC 20224, Attention: CC:LR:T:EE-154-78, telephone 202-566-3544 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

This document contains proposed amendments to the Income Tax Regulations (26 CFR Part 1), Temporary Income Tax Regulations under the Tax Reform Act of 1976 (26 CFR Part 7), Estate Tax Regulations (26 CFR Part 20), Gift Tax Regulations (26 CFR Part 25), Foundation and Similar Excise Taxes (26 CFR Part 53), and Public Charity Excise Taxes (26 CFR Part 56), under sections 170, 501(c)(3), 501(c)(4), 504, 2055, 2522, 4911, 4945, 6001, 6011, and 6033 of the Internal Revenue Code of 1954. These amendments are proposed to conform the regulations to section 1307 of the Tax Reform Act of 1976 (90 Stat. 1720) and are to be issued under the authority contained in sections 501(h)(6), 504(b), 4911(f)(3) and 7805 of the Internal Revenue Code of 1954 (90 Stat. 1721, 1722, 1726, 68A Stat. 917; 26 U.S.C. 501(h)(6), 504(b), 4911(f)(3), 7805).

Prior Law

A publicly supported charity is not an organization described in section 501(c)(3) ("a section 501(c)(3) organization") unless any lobbying it does is limited to an insubstantial part of its activities. If it is determined that a substantial part of an organization's activities consists of attempts to influence legislation, the public charity will lose its tax-exempt status. Before the passage of the Tax Reform Act of 1976, there was uncertainty about what constituted a "substantial part" of an organization's activities. Congress was aware that the loss of tax exemption could constitute a severe blow to an organization or could, in some cases, have relatively little effect. This uncertain effect could tend to discourage enforcement. Further, Congress was aware of the belief that the vague standards of the substantial part test tended to encourage subjective and selective enforcement.

Expenditure Test

Under sections 501(h) and 4911, added by section 1307 of the Tax Reform Act of 1976, certain section 501(c)(3) organizations may elect to spend up to a

certain percentage of their "exempt purpose expenditures" to influence legislation without violating section 501(c)(3). If an organization elects the "expenditure test" of sections 501(h) and 4911, specific limits on lobbying expenditures apply. Separate limits, the "lobbying nontaxable amount" and the "grass roots nontaxable amount," are established for all lobbying expenditures and for grass roots lobbying expenditures, respectively. A 25 percent excise tax is imposed on the greater of the amount by which an organization's lobbying expenditures exceed its lobbying nontaxable amount or the amount by which its grass roots expenditures exceed its grass roots nontaxable amount. Additionally, "ceiling amounts" equal to 150 percent of the lobbying nontaxable amount and 150 percent of the grass roots lobbying nontaxable amount are established. If an organization's lobbying expenditures or grass roots expenditures normally exceed the corresponding ceiling amount, the organization will cease to be described in section 501(c)(3) and therefore will cease to be exempt from tax.

Denial of Deduction for Out-of-Pocket Expenditures in Connection With Lobbying

Code section 170 provides income tax rules governing the deductibility of charitable contributions made to public charities and certain other organizations, including churches and church-related organizations. Under income tax regulations that are substantially unchanged since 1958, no deduction is allowed for expenditures for the "promotion or defeat of legislation" including out-of-pocket expenditures incurred in connection with lobbying on behalf of organizations referred to above.

Section 1307(c) of the Tax Reform Act of 1976 ("Act") added Code section 170(f)(6). That section denies a deduction for out-of-pocket expenditures made in connection with lobbying on behalf of a charitable organization; but contains a parenthetical exclusion relating to churches or church-related organizations ("disqualified organizations"). The parenthetical exclusion in that section is consistent with Congressional intent that the rules in section 1307 of the Act not apply to disqualified organizations. *See, e.g.,* S. Rep. No. 938 Part 2, 94th Cong., 2d Sess. (1976) 84, reprinted in 1976–3 C.B. Vol. 3 at 726. Accordingly, these proposed regulations do not construe the parenthetical language of section 170(f)(6) to permit a deduction for out-of-pocket expenditures made in connection with lobbying on behalf of a disqualified organization. Instead, the proposed regulations provide that out-of-pocket lobbying expenditures incurred on behalf of disqualified organizations are governed by prior law as if section 1307 of the Act had not been enacted. Thus, the proposed regulations do not affect the denial of deductibility, under present regulations, for out-of-pocket expenditures made in connection with lobbying on behalf of any organization other than an eligible organization.

Allocations Between Lobbying and Other Purposes

Where an activity of an organization covered by these proposed regulations includes both lobbying and other purposes, the proposed regulations provide several specific rules. Section 56.4911–2(c)(1) provides that if any part of an advertisement constitutes grass roots lobbying, the entire amount expended for, or in connection with, the advertisement constitutes a grass roots expenditure. Section 56.4911–2(d)(2) provides that an expenditure that is both a fund raising expenditure and an expenditure for grass roots lobbying will be considered an expenditure for grass roots lobbying in full. However, if one of these special rules does not apply, § 56.4911–2(d)(1) provides that an activity involving both lobbying and other purposes will require an allocation, based on all the facts and circumstances, between that part of the expenditure which is treated as a lobbying expenditure and that part which is treated as a nonlobbying expenditure. The Internal Revenue Service specifically requests comments on suggested factors to be taken into account in administering the facts and circumstances allocation rule of § 56.4911–2(d)(1).

Making Available the Results of Nonpartisan Analysis, Study, or Research

Code section 4911(d)(2)(A) provides that the term "influencing legislation" does not include making available the results of nonpartisan analysis, study, or research. These proposed regulations construe nonpartisan analysis, study, or research by cross-reference to § 53.4945–2(d)(1) (relating to a similar exception to the private foundation rules regarding lobbying). In addition, this document proposes to amend § 53.4945–2(d)(1)(iv) (relating to making available the results of nonpartisan analysis, study, or research) to provide that the exception does not apply, if the method of distribution favors those persons interested solely in one side of a particular issue. This corresponds to the existing requirement that the distribution may not be limited to persons on one side of an issue and is intended to promote broad and equitable distribution of the analysis, study, or research, to all interested persons. The proposed amendment to § 53.4945–2(d)(1) has a proposed effective date of ninety days after publication of this notice in the **Federal Register.**

Comments and Requests for a Public Hearing

Before adopting these proposed regulations, consideration will be given to any written comments that are submitted (preferably eight copies) to the Commissioner of Internal Revenue. All comments will be available for public inspection and copying. A public hearing will be held upon written request to the Commissioner by any person who has submitted written comments. If a public hearing is held, notice of the time and place will be published in the **Federal Register.**

Regulatory Flexibility Act; Executive Order 12291; Paperwork Reduction Act of 1980

Although this document is a notice of proposed rulemaking which solicits public comment, the Internal Revenue Service has concluded that the regulations proposed herein are interpretative and that the notice and public procedure requirements of 5 U.S.C. 553 do not apply. Accordingly, these proposed regulations do not constitute regulations subject to the Regulatory Flexibility Act (5 U.S.C. chapter 6).

The Commissioner of Internal Revenue has determined that this proposed rule is not a major rule as defined in Executive Order 12291 and that a regulatory impact analysis therefore is not required.

The collection of information requirements contained in this notice of proposed rulemaking have been submitted to the Office of Management and Budget (OMB) for review under section 3504(h) of the Paperwork Reduction Act. Comments on these requirements should be sent to the Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for Internal Revenue Service, New Executive Office Building, Washington, DC 20503. The Internal Revenue Service requests that persons submitting comments on these requirements to OMB also send copies of those comments to the Service.

Supersession

These regulations, when published in final form in the **Federal Register**, will supersede § 7.0(c)(4) of the Temporary Income Tax Regulations under the Tax Reform Act of 1976.

Drafting Information

The principal author of these proposed regulations was George Baker of the Employee Plans and Exempt Organizations Division of the Office of Chief Counsel. Other offices of the Internal Revenue Service and Treasury Department participated in developing the regulations, both on matters of substance and style.

List of Subjects

26 CFR Part 1

Income taxes, Taxable income, Deductions, Exemptions, Exempt organizations, Foundations, Nonprofit organizations, Cooperatives, Political organizations, Homeowners associations, Administration and procedure, Filing requirements.

26 CFR Part 7

Income taxes, Tax Reform Act of 1976.

26 CFR Part 20

Estate taxes.

26 CFR Part 25

Gift taxes.

26 CFR Part 53

Excise taxes, Foundations, Investments, Trusts and trustees.

26 CFR Part 56

Excise tax, Lobbying expenditures, Exempt purpose expenditures, Affiliated organizations, Administration and procedure.

Proposed Amendments to the Regulations

A new Part 56, Public Charity Excise Taxes, is proposed to be added to Title 26 of the Code of Federal Regulations, and amendments to 26 CFR Parts 1, 7, 20, 25, and 53 are proposed as follows:

INCOME TAX REGULATIONS

PART 1—[AMENDED]

Paragraph 1. The authority citation for part 1 is amended by adding the following citation:

Authority: 26 U.S.C. 7805. * * * Sections 1.504–1 and 1.504–2 also issued under 26 U.S.C. 504(b).

Par. 2. Section 1.170A–1 is amended by revising paragraph (h)(5), adding a new paragraph (h)(11), and revising paragraph (i). These revised and added provisions read as follows:

§ 1.170A–1 Charitable, etc., contributions and gifts; allowance of deduction.

* * * * *

(h) *Exceptions and other rules.* * * *

(5) No deduction shall be allowed under section 170 for amounts paid to an organization—

(i) Which is disqualified for tax exemption under section 501(c)(3) by reason of attempting to influence legislation, or

(ii) Which participates in, or intervenes in (including the publishing or distributing of statements), any political campaign on behalf of any candidate for public office.

For purposes of determining whether an organization is attempting to influence legislation or is engaging in political activities. see sections 501(c)(3), 501(h), 4911 and the regulations thereunder.

* * * * *

(11) No deduction shall be allowed under section 170 for out-of-pocket expenditures on behalf of an eligible organization (within the meaning of § 1.501(h)–2(b)(1)) if the expenditure is made in connection with influencing legislation (within the meaning of section 501(c)(3) or § 56.4911–2), or in connection with the payment of the organization's tax liability under section 4911. For the treatment of similar expenditures on behalf of other organizations see paragraph (h)(6) of this section.

(i) *Effective date.* In general, this section applies to contributions paid in taxable years beginning after December 31, 1969. Paragraph (h)(11), however, applies only to out-of-pocket expenditures made in taxable years beginning after December 31, 1976.

Par. 3. In § 1.501(c)(3)–1, paragraph (b)(3) is amended by adding the following sentence at the end:

§ 1.501(c)(3)–1 Organizations organized and operated for religious, charitable, scientific, testing for public safety, literary, or educational purposes, or for the prevention of cruelty to children or animals.

* * * * *

(b) *Organizational test.* * * *

(3) *Authorization of legislative or political activities.* * * * An organization's articles will not violate the provisions of subdivision (i) of this paragraph (b)(3) even though the organization's articles expressly empower it to make the election provided for in section 501(h) with respect to influencing legislation and, only if it so elects, to make lobbying or grass roots expenditures that do not normally exceed the ceiling amounts prescribed by section 501(h)(2) (B) and (D).

* * * * *

Par. 4. In § 1.501(c)(3)–1, paragraph (c)(3)(ii) is amended by adding a new sentence at the end of subdivision (ii) to read as follows:

§ 1.501(c)(3)–1 Organizations organized and operated for religious, charitable, scientific, testing for public safety, literary, or educational purposes, or for the prevention of cruelty to children or animals.

* * * * *

(c) *Operational test.* * * *

(3) *"Action" organizations.* * * *

(ii) * * * An organization for which the expenditure test election of section 501(h) is in effect for a taxable year will not be considered an "action" organization by reason of this subdivision (ii) for that year if it is not denied exemption from taxation under section 501(a) by reason of section 501(h).

* * * * *

Par. 5. In § 1.501(c)(4)–1, paragraph (a)(2)(ii) is amended by revising the last sentence and adding a new sentence immediately thereafter. The revised and added sentences read as follows:

§ 1.501(c)(4)–1 Civic organizations and local associations of employees.

(a) *Civic organizations.* * * *

(2) *Promotion of social welfare.* * * *

(ii) *Political or social activities.* * * * A social welfare organization that is not, at any time after October 4, 1976, exempt from taxation as an organization described in section 501(c)(3) may qualify under section 501(c)(4) even though it is an "action" organization described in § 1.501 (c)(3)–1 (c)(3) (ii) or (iv), if it otherwise qualifies under this section. For rules relating to an organization that is, after October 4, 1976, exempt from taxation as an organization described in section 501(c)(3), see section 504 and § 1.504–1.

* * * * *

Par. 6. The following new §§ 1.501(h)–1 through 1.501(h)–3 are added in the appropriate place:

§ 1.501(h)–1 Application of the "expenditure test" to expenditures to influence legislation; introduction.

(a) *Scope.* Section 501(c)(3) requires, among other things, that an organization described therein be one "no substantial part of the activities of which is carrying on propaganda, or otherwise attempting to influence legislation, (except as otherwise provided in subsection (h))" This requirement is referred to as the "substantial part test." Under section 501(h), certain organizations described

in section 501(c)(3) (see § 1.501(h)–2) may elect the "expenditure test" described in this section, § 1.501(h)–2, and § 1.501(h)–3, as a substitute for the substantial part test. An organization that elects the expenditure test under section 501(h) may make expenditures for lobbying or for grass roots lobbying within limits determined under section 4911(c) (the limits being referred to as the "lobbying nontaxable amount" and "grass roots nontaxable amount") without incurring an excise tax under section 4911(a) and without loss of tax exemption as an organization described in section 501(c)(3) by reason of section 501(h). However, if an electing organization's lobbying expenditures or grass roots expenditures exceed the corresponding nontaxable amount, the organization is subject to an excise tax on the excess (see §§ 56.4911–1 *et seq.*). Further, under section 501(h) (see § 1.501(h)–3), if an electing organization's lobbying or grass roots expenditures normally exceed its "lobbying ceiling amount" or "grass roots ceiling amount" (150 percent of the corresponding nontaxable amounts), the organization will cease to be described in section 501(c)(3). An organization that elects the expenditure test may nevertheless be determined to be an action organization under § 1.501(c)(3)–1 (c)(3) (iii) or (iv). An organization that does not elect the expenditure test (including an organization not eligible to elect, or disqualified from making the election) remains subject to the substantial part test. The substantial part test is applied without regard to the provisions of section 501(h) and 4911 and the regulations thereunder.

(b) *Effective date.* The provisions of §§ 1.501(h)–1 through 1. 501(h)–3, are effective for taxable years beginning after December 31, 1976. An election made before November 5, 1986, under the provisions of § 7.0(c)(4) or the instructions to Form 5768 will be effective under these regulations without again filing Form 5768.

§ 1.501(h)–2 Electing the expenditure test.

(a) *In general.* The election to be governed by section 501(h) may be made by an eligible organization (as described in paragraph (b) of this section) for any taxable year of the organization beginning after December 31 1976, other than the first taxable year for which a voluntary revocation of the election is effective (see paragraph (d) of this section). The election is made by filing a completed Form 5768, Election/ Revocation of Election by an Eligible Section 501(c)(3) Organization to Make Expenditures to Influence Legislation, with the appropriate Internal Revenue Service Center listed on that form. Under section 501(h)(6), the election is effective with the beginning of the taxable year in which the form is filed. For example, if an eligible organization whose taxable year is the calendar year files Form 5768 on December 31, 1979, the organization is governed by section 501(h) for its taxable year beginning January 1, 1979. Once made, the expenditure test election is effective (without again filing Form 5768) for each succeeding taxable year for which the organization is an eligible organization and which begins before a notice of revocation is filed under paragraph (d) of this section.

(b) *Organizations eligible to elect the expenditure test*—(1) *In general.* For purposes of section 501(h) and the regulations thereunder, an organization is an eligible organization for a taxable year if, for that taxable year, it is—

(i) Described in section 501(c)(3) (determined, in any year for which an election is in effect, without regard to the substantial part test of section 501(c)(3)),

(ii) Described in section 501(h)(4) and paragraph (b)(2) of this section, and

(iii) Not a disqualified organization described in section 501(h)(5) and paragraph (b)(3) of this section.

(2) *Certain organizations listed.* An organization is described in section 501(h)(4) and this paragraph (b)(2) if it is an organization described in—

(i) Section 170(b)(1)(A)(ii) (relating to educational institutions),

(ii) Section 170(b)(1)(A)(iii) (relating to hospitals and medical research organizations),

(iii) Section 170(b)(1)(A)(iv) (relating to organizations supporting government schools),

(iv) Section 170(b)(1)(A)(vi) (relating to organizations publicly supported by charitable contributions),

(v) Section 509(a)(2) (relating to organizations publicly supported by admissions, sales, etc.), or

(vi) Section 509(a)(3) (relating to organizations supporting public charities), but only if the organization it supports is described in section 501(c)(3).

(3) *Disqualified organizations.* An organization is a disqualified organization described in section 501(h)(5) and this paragraph (b)(3) if the organization is—

(i) Described in section 170(b)(1)(A)(i) (relating to churches),

(ii) An integrated auxiliary of a church or of a convention or association of churches (see § 1.6033–2(g)(5)), or

(iii) Described in section 501(c)(3) and affiliated (within the meaning of § 56.4911–7) with one or more organizations described in subdivision (i) or (ii) of this paragraph (b)(3).

(4) *Other organizations ineligible to elect.* Under section 501(h)(4), certain organizations, although not disqualified organizations, are not eligible to elect the expenditure test. For example, organizations described in section 509(a)(4) are not listed in section 501(h)(4) and therefore are not eligible to elect. Similarly, private foundations (within the meaning of section 509(a)) are not eligible to elect. For the treatment of expenditures by a private foundation for the purpose of carrying on propaganda, or otherwise attempting, to influence legislation, see § 53.4945–2.

(c) *New organizations.* A newly created organization may submit Form 5768 to elect the expenditure test under section 501(h) before it is determined to be an eligible organization and may submit Form 5768 at the time it submits its application for recognition of exemption (Form 1023). If the newly created organization is determined to be an eligible organization, the election will be effective under the provisions of paragraph (a) of this section, that is, with the beginning of the taxable year in which the Form 5768 is filed by the eligible organization. However, if a newly created organization is determined by the Service to be a private foundation, section 4945(d)(1) and § 53.4945–2 will apply and the organization will be liable for excise taxes under section 4945 on amounts expended in attempts to influence legislation. Also, if a newly created organization is neither a private foundation (see § 1.501(h)–2(b)(4)) nor a disqualified organization (see § 1.501(h)–2(b)(3)), but is determined by the Service not to be an eligible organization, the organization's election will not be effective and the substantial part test will apply from the effective date of its section 501(c)(3) classification.

(d) *Voluntary revocation of expenditure test election*—(1) *Revocation effective.* An organization may voluntarily revoke an expenditure test election by filing a notice of voluntary revocation with the appropriate Internal Revenue Service Center listed on Form 5768. Under section 501(h)(6)(B), a voluntary revocation is effective with the beginning of the first taxable year after the taxable year in which the notice is filed. If an organization voluntarily revokes its election, the substantial part test of section 501(c)(3) will apply with respect to the organization's activities in attempting to influence legislation beginning with the taxable year for

which the voluntary revocation is effective.

(2) *Re-election of expenditure test.* If an organization's expenditure test election is voluntarily revoked the organization may again make the expenditure test election, effective no earlier than for the taxable year following the first taxable year for which the revocation is effective.

(3) *Example. X,* an organization whose taxable year is the calendar year, plans to voluntarily revoke its expenditure test election effective beginning with its taxable year 1985. *X* must file its notice of voluntary revocation on Form 5768 after December 31, 1983, and before January 1, 1985. If *X* files a notice of voluntary revocation on December 31, 1984, the revocation is effective beginning with its taxable year 1985. The organization may again elect the expenditure test by filing Form 5768. Under paragraph (d)(2) of this section, the election may not be made for taxable year 1985. Under paragraph (a) of this section, a new expenditure test election will be effective for taxable years beginning with taxable year 1986, if the Form 5768 is filed after December 31, 1985, and before January 1, 1987.

(e) *Involuntary revocation of expenditure test election.* If, while an election by an eligible organization is in effect, the organization ceases to be an eligible organization, its election is automatically revoked. The revocation is effective with the beginning of the first full taxable year for which it is determined that the organization is not an eligible organization. If an organization's expenditure test election is involuntarily revoked under this paragraph (e) but the organization continues to be described in section 501(c)(3), the substantial part test of section 501(c)(3) will apply with respect to the organization's activities in attempting to influence legislation beginning with the first taxable year for which the involuntary revocation is effective.

(f) *Supersession.* This section supersedes § 7.0(c)(4) of the Temporary Income Tax Regulations under the Tax Reform Act of 1976, effective [the date that final regulations are published in the **Federal Register**.]

§ 1.501(h)-3 Lobbying or grass roots expenditures normally in excess of ceiling amount.

(a) *Scope.* This section provides rules under section 501(h) for determining whether an organization that has elected the expenditure test and that is not a member of an affiliated group of organizations (as defined in § 56.4911-7(e)) either normally makes lobbying expenditures in excess of its lobbying ceiling amount or normally makes grass roots expenditures in excess of its grass roots ceiling amount. Under section 501(h) and this section, an organization that has elected the expenditure test and that normally makes expenditures in excess of the corresponding ceiling amount will cease to be exempt from tax under section 501(a) as an organization described in section 501(c)(3). For similar rules relating to members of an affiliated group of organizations, see § 56.4911-9.

(b) *Loss of exemption*—(1) *In general.* Under section 501(h)(1) an organization that has elected the expenditure test shall be denied exemption from taxation under section 501(a) as an organization described in section 501(c)(3) for the taxable year following a determination year if—

(i) The sum of the organization's lobbying expenditures for the base years exceeds 150 percent of the sum of its lobbying nontaxable amounts for the base years, or

(ii) The sum of the organization's grass roots expenditures for its base years exceeds 150 percent of the sum of its grass roots nontaxable amounts for the base years.

The organization thereafter shall not be exempt from tax under section 501(a) as an organization described in section 501(c)(3) unless, pursuant to paragraph (d) of this section, the organization reapplies for recognition of exenption and is recognized as exempt.

(2) *Special exception for organization's first election.* For the first, second, or third consecutive determination year for which an organization's first expenditure test election is in effect, no determination is required under paragraph (b)(1) of this section, and the organization will not be denied exemption from tax by reason of section 501(h) and this section if, taking into account as base years only those years for which the expenditure test election is in effect—

(i) The sum of the organization's lobbying expenditures for such base years does not exceed 150 percent of the sum of its lobbying nontaxable amounts for the same base years, and

(ii) The sum of the organization's grass roots expenditures for those base years does not exceed 150 percent of the sum of its grass roots nontaxable amounts for such base years.

If an organization does not satisfy the requirements of this paragraph (b)(2), paragraph (b)(1) of this section will apply.

(c) *Definitions.* For purposes of this section—

(1) The term "lobbying expenditures" means lobbying expenditures as defined in section 4911(c)(1) or section 4911(f)(4)(A) and § 56.4911-2(a).

(2) The term "lobbying nontaxable amount" is defined in § 56.4911-1(c)(1).

(3) An organization's "lobbying ceiling amount" is 150 percent of the organization's lobbying nontaxable amount for a taxable year.

(4) The term "grass roots expenditures" means grass roots expenditures as defined in section 4911(c)(3) or section 4911(f)(4)(A) and § 56.4911-2(c).

(5) The term "grass roots nontaxable amount" is defined in § 56.4911-1(c)(2).

(6) An organization's "grass roots ceiling amount" is 150 percent of the organization's grass roots nontaxable amount for a taxable year.

(7) In general, the term "base years" means the determination year and the three taxable years immediately preceding the determination year. The base years, however, do not include any taxable year preceding the taxable year for which the organization is first treated as described in section 501(c)(3).

(8) A taxable year is a "determination year" if it is a year for which the expenditure test election is in effect, other than the taxable year for which the organization is first treated as described in section 501(c)(3).

(d) *Reapplication for recognition of exemption*—(1) *Time of application.* An organization that is denied exemption from taxation under section 501(a) by reason of section 501(h) and this section may apply on Form 1023 for recognition of exemption as an organization described in section 501(c)(3) for any taxable year following the first taxable year for which exemption is so denied. See subparagraphs (2) and (3) of this paragraph (d) for material to be included with an application described in the preceding sentence.

(2) *Section 501(h) calculation.* An application described in paragraph (d)(1) of this section must demonstrate that the organization would not be denied exemption from taxation under section 501(a) by reason of section 501(h) if the expenditure test election had been in effect for all of its last taxable year ending before the application is made by providing the calculations, described either in paragraphs (b)(1) (i) and (ii) of this section or in § 56.4911-9(b), that would have applied to the organization for that year.

(3) *Operations not disqualifying.* An application described in paragraph (d)(1) of this section must include information that demonstrates to the

satisfaction of the Commissioner that the organization will not knowingly operate in a manner that would disqualify the organization for tax exemption under section 501(c)(3) by reason of attempting to influence legislation.

(4) *Re-election of expenditure test.* If an organization is denied exemption from tax for a taxable year by reason of section 501(h) and this section, and thereafter is again recognized as an organization described in section 501(c)(3) pursuant to this paragraph (d), it may again elect the expenditure test under section 501(h) in accordance with § 1.501(h)–2(a).

(e) *Examples.* The provisions of this section are illustrated by the following examples, which also illustrate the operation of the tax imposed by section 4911.

Example (1). (1) The following table contains information used in this example concerning organization *X*.

Year	Exempt Purpose Expenditures (EPE)	Calculation	Lobbying Nontaxable Amount (LNTA)	Lobbying Expenditures (LE)
1979	$400,000	(20% of $400,000=)	$80,000	$100,000
1980	300,000	(20% of $300,000=)	60,000	100,000
1981	600,000	(20% of $500,000+15% of $100,000=).	115,000	120,000
1982	500,000	(20% of $500,000=)	100,000	100,000
Total	1,800,000		355,000	420,000

(2) Organization *X, whose taxable year is the calendar year was organized in 1971. X* first made the expenditure test election under section 501(h) effective for taxable years beginning with 1979 and has not revoked the election. None of *X*'s lobbying expenditures for its taxable years 1979 through 1982 are grass roots expenditures. Under section 4911(a) and § 56.4911–1(a), *X* must determine for each year for which the expenditure test election is effective whether it is liable for the 25 percent excise tax imposed by section 4911(a) on excess lobbying expenditures. *X* is liable for this tax for each of its taxable years 1979, 1980, and 1981, because in each year its lobbying expenditures exceeded its lobbying nontaxable amount for the year. For 1979, the tax imposed by section 4911(a) is $5,000 [25%×($100,000−$80,000)=$5,000]. For 1980, the tax is $10,000. For 1981, the tax is $1,250.

(3) The taxable years 1979 through 1981 are all determination years under paragraph (c)(8) of this section. On its annual return for determination year 1979, the first year of its first election, *X* can demonstrate, under paragraph (b)(2) of this section, that its lobbying expenditures during 1979 ($100,000) do not exceed 150 percent of its lobbying nontaxable amount for 1979 ($120,000). For determination year 1980, under paragraph (b)(2), *X* can demonstrate that the sum of its lobbying expenditures for 1979 and 1980 ($200,000) does not exceed 150 percent of the sum of its lobbying nontaxable amounts for 1979 and 1980 ($210,000). For 1981, under paragraph (b)(2), *X* can demonstrate that the sum of its lobbying expenditures for 1979, 1980, and 1981 ($320,000) does not exceed 150 percent of the sum of its lobbying nontaxable amounts for 1979, 1980, and 1981 ($382,500). For each of the determination years 1979, 1980, and 1981, the first three years of its first election, *X* satisfies the requirements of paragraph (b)(2). Accordingly, no determination under paragraph (b)(1) of this section is required for those years, and *X* is not denied tax exemption by reason of section 501(h).

(4) Under paragraph (b)(1) of this section, *X* must determine for its determination year 1982 whether it has normally made lobbying expenditures in excess of the lobbying ceiling amount. This determination takes into account expenditures in base years 1979 through 1982. The sum of *X*'s lobbying expenditures for the base years ($420,000) does not exceed 150% of the sum of the lobbying nontaxable amounts for the base years (150%×$355,000=$532,500). Accordingly, *X* is not denied tax exemption by reason of section 501(h).

Example (2). (1) The following table contains information used in this example concerning *W*.

Year	Exempt Purpose Expenditures (EPE)	Calculation	Lobbying Nontaxable Amount (LNTA)	Lobbying Expenditures (LE)	Grass Roots nontaxable amount (25% of LNTA)	Grass Roots expenditures
1979	$700,000	(20% of $500,000+15% of $200,000=)	$130,000	$120,000	$32,500	$30,000
1980	800,000	(20% of $500,000+15% of $300,000=)	145,000	100,000	36,250	60,000
1981	800,000	(20% of $500,000+15% of $300,000=)	145,000	100,000	36,250	65,000
1982	900,000	(20% of $500,000+15% of $400,000=)	160,000	150,000	40,000	65,000
Total	3,200,000		580,000	470,000	145,000	220,000

(2) Organization *W*, whose taxable year is the calendar year, made the expenditure test election under section 501(h) effective for taxable years beginning with 1979 and has not revoked the election. *W* has been treated as an organization described in section 501(c)(3) for each of its taxable years beginning with its taxable year 1974.

(3) Under section 4911(a) and § 56.4911–1 (a), *W* must determine for each year for which the expenditure test election is effective whether it is liable for the 25 percent excise tax imposed by section 4911(a) on excess lobbying expenditures. In 1980, 1981, and 1982, *W* has excess lobbying expenditures because its grass roots expenditures in each of those years exceeded its grass roots nontaxable amount for the year. Therefore, *W* is liable for the excise tax under section 4911(a) for those years. The tax imposed by section 4911(a) for 1980 is $5,937.50 [25%×($60,000−$36,250)=$5,937.50]. For 1981, the tax is $7,187.50. For 1982, the tax is $6,250.

(4) On its annual return for its determination years 1979, 1980, and 1981, the first three years of its first election, *W* demonstrates that it satisfies the requirements of paragraph (b)(2) of this section. Accordingly, no determination under paragraph (b)(1) of this section is required for those years, and *W* is not denied tax exemption by reason of section 501(h).

(5) On its annual return for its determination year 1982, *W* must determine under paragraph (b)(1) whether it has normally made lobbying expenditures or grass roots expenditures in excess of the corresponding ceiling amount. This determination takes into account expenditures in base years 1979 through 1982. The sum of *W*'s lobbying expenditures for the base years ($470,000) does not exceed 150% of the sum of *W*'s lobbying nontaxable amounts for those years (150%×$580,000=$870,000). However, the sum of *W*'s grass roots expenditures for the base years ($220,000) does exceed 150% of the sum of *W*'s grass roots nontaxable amounts for those years (150%×$145,000=$217,500). Under section 501(h), *W* is denied tax exemption under section 501(a) as an organization described in section 501(c)(3) for its taxable year 1983. For its taxable year 1984 and any taxable year thereafter, *W* is exempt from tax as an organization described in section 501(c)(3) only if *W* applies for recognition of its exempt status under paragraph (d) of this section and is recognized as exempt from tax.

Example (3). (1) The following table contains information used in this example concerning organization *Y*.

Taxable year	Exempt purpose expenditures (EPE)	Calculation	Lobbying nontaxable amount (LNTA)	Lobbying expenditures (LE)	Grass roots nontaxable amount (25% of LNTA)	Grass roots expenditures
1977	$700,000	(20% of $500,000 + 15% of $200,000 =)	$130,000	$182,000	$32,500	$30,000
1978	800,000	(20% of $500,000 + 15% of $300,000 =)	145,000	224,750	36,250	35,000
Subtotal	1,500,000		275,000	406,750	68,750	65,000
1979	900,000	(20% of $500,000 + 15% of $400,000 =)	160,000	264,000	40,000	50,000
Total	2,400,000		435,000	670,750	108,750	115,000

(2) Organization *Y* whose taxable year is the calendar year, was first treated as an organization described in section 501(c)(3) on February 1, 1977. *Y* made the expenditure test election under section 501(h) effective for taxable years beginning with 1977 and has not revoked the election.

(3) For 1977, *Y* has excess lobbying expenditures of $52,000 because its lobbying expenditures ($182,000) exceed its lobbying nontaxable amount ($130,000) for the taxable year. Accordingly, *Y* is liable for the 25 percent excise tax imposed by section 4911(a). The amount of the tax is $13,000 [25% × $52,000 = $13,000].

(4) For 1978, *Y* again has excess lobbying expenditures and is again liable for the 25 percent excise tax imposed by section 4911(a). The amount of the tax is $19,937.50 [25% × ($224,750 − $145,000) = $19,937.50].

(5) For 1979, *Y*'s lobbying expenditures ($264,000) exceed its lobbying nontaxable amount ($160,000) by $104,000, and its grass roots expenditures ($50,000) exceed its grass roots nontaxable amount ($40,000) by $10,000. Under § 56.4911–1(b), *Y*'s excess lobbying expenditures are the greater of $104,000 or $10,000. The amount of the tax, therefore, is $26,000 [25% × $104,000 = $26,000].

(6) Under paragraph (c)(8) of this section, 1977 is not a determination year because it is the first year for which the organization is treated as described in section 501(c)(3). For 1977, *Y* need not determine whether it has normally made lobbying expenditures or grass roots expenditures in excess of the corresponding ceiling amount for purposes of determining whether it is denied exemption under section 501(h) for its taxable year 1978.

(7) For determination year 1978, *Y* must determine whether it has normally made lobbying or grass roots expenditures in excess of the corresponding ceiling amount, taking into account expenditures for the base years 1977 and 1978. For *Y*, the determination under paragraph (b)(2) of this section considers the same base years as the determination under paragraph (b)(1) of this section and is, therefore, redundant. Accordingly, *Y* proceeds to determine, under (b)(1), whether it is denied exemption. *Y*'s grass roots expenditures for 1977 and 1978 ($65,000) did not exceed 150 percent of the sum of its grass roots nontaxable amounts for those years ($103,125). *Y*'s lobbying expenditures for 1977 and 1978 ($406,750) did not exceed 150% of its lobbying nontaxable amount for those years (150% × $275,000 = $412,500). Therefore, *Y* is not denied tax exemption under section 501(h) for its taxable year 1979.

(8) For determination year 1979, the sum of *Y*'s grass roots expenditures in base years 1977, 1978, and 1979 does not exceed 150 percent of its grass roots nontaxable amount (calculation omitted). However, the sum of *Y*'s lobbying expenditures for the base years ($670,750) does exceed 150% of the sum of the lobbying nontaxable amounts for those years (150% × $435,000 = $652,500). Since *Y* was not described in section 501(c)(3) prior to 1977, only the years 1977, 1978, and 1979 may be considered in determining whether *Y* has normally made lobbying expenditures in excess of its lobbying ceiling. Therefore, *Y* determines that it has normally made lobbying expenditures in excess of its lobbying ceiling. Under section 501(h), *Y* is denied tax exemption under section 501(a) as an organization described in section 501(c)(3) for its taxable year 1980. For its taxable year 1981, and any taxable year thereafter, *Y* is exempt from tax as an organization described in section 501(c)(3) only if *Y* applies for recognition of its exempt status under paragraph (d) of this section and is recognized as exempt from tax.

Par. 7. Existing section 1.504–1 is removed and new §§ 1.504–1 and 1.504–2, to read as follows, are added in the appropriate place:

§ 1.504–1 Attempts to influence legislation; certain organizations formerly described in section 501(c)(3) denied exemption.

Section 504(a) and this section apply to an organization that is exempt from taxation at any time after October 4, 1976, as an organization described in section 501(c)(3), and that ceases to be described in that section because it—

(a) Is an "action" organization, within the meaning of § 1.501 (c)(3)–1 (c)(3) (ii) or (iv), on account of activities occurring after October 4, 1976, or

(b) Is denied exemption under the provisions of section 501(h) (see § 1.501(h)–3 or § 56.4911–9).

This section does not apply, however, to an organization that was described in section 501(h)(5) and § 1.501(h)–2(b)(3) (relating generally to churches) for its taxable year immediately preceding the first taxable year for which it is no longer an organization described in section 501(c)(3). An organization to which section 504(a) and this section apply shall not be treated as described in section 501(c)(4) at any time after the organization ceases to be described in section 501(c)(3). Further, an organization denied treatment as an organization described in section 501(c)(4) under this section may not be treated as an organization described in section 501(c) other than as an organization described in section 501(c)(3). For rules relating to recognition of exemption after exemption is denied under section 501(h), see § 1.501(h)–3(d).

§ 1.504–2 Certain transfers made to avoid section 504(a).

(a) *Scope.* Under section 504(b), a transfer described in paragraph (b) or (c) of this section to an organization exempt from tax under section 501(a) may result in loss of exemption by the transferee unless the Commissioner determines, under paragraph (e) of this section, that the original transfer did not effect an avoidance of section 504(a). For purposes of this section, the term "transfer" includes any use by, or for the benefit of, the recipient of the transfer, but does not include any transfer made for adequate and full consideration.

(b) *Transferor and transferee commonly controlled*—(1) *Loss of exemption.* A transfer is described in this paragraph (b) if it is described in paragraph (b)(2) through (b)(6). The transferee of a transfer described in this paragraph will cease to be exempt from tax under section 501(a), unless the provisions of paragraph (e) of this section apply.

(2) *Transferor organization.* A transfer is described in this paragraph (b)(2) only if it is from an organization that—

(i) Is or was described in section 501(c)(3), but not in section 501(h)(5), and

(ii) Is determined to be an "action" organization (as defined in § 1.501 (c)(3)–1 (c)(3) (ii) or (iv)), or is denied exemption from tax by reason of section 501(h) and either § 1.501(h)–3 or § 56.4911–9.

(3) *Transferor and transferee commonly controlled.* A transfer is described in this paragraph (b)(3) only if, at the time of the transfer or at any time during the transferee's ten taxable years following the year in which the transfer was made, the transferee is controlled (directly or indirectly), as defined in paragraph (f) of this section,

by the same person or persons who control the transferor.

(4) *Time of transfer.* A transfer is described in this paragraph (b)(4) only if the transfer is made after February 3, 1987, and—

(i) After the date that is 24 months before the earliest of the effective date of the determination under section 501(h) that the transferor is not exempt, the effective date of the Commissioner's determination that the transferor is an "action" organization (as defined in § 1.501(c)(3) (ii) or (iv)), or the date on which the Commissioner proposes to treat it as no longer described in section 501(c)(3), and

(ii) Before the transferor again is recognized as an organization described in section 501(c)(3).

(5) *Transferee.* A transfer is described in this paragraph (b)(5) only if the transferee is exempt from tax under section 501(a) but the transferee is neither—

(i) An organization described in section 501(c)(3), nor

(ii) An organization described in section 401(a) to which the transferor contributes as an employer.

(6) *Amount of transfer.* A transfer is described in this paragraph (b)(6) only if the amount of the transfer exceeds the lesser of 30 percent of the transferor's assets, or 50 percent of the transferee's assets, computed immediately before the transfer. For purposes of this paragraph (b)(6)—

(i) The amount of a transfer by a transferor is the sum of the amounts transferred to any number of transferees in any number of transfers, all of which are described in paragraphs (b)(2) through (b)(5) of this section, and the time of the transfer is the time of the first transfer so taken into account; and

(ii) The amount of a transfer to a transferee is the sum of the amounts transferred by a transferor to the transferee in any number of transfers, all of which are described in paragraphs (b)(2) through (b)(5) of this section, and the time of the transfer is the time of the first transfer so taken into account.

(c) *Other transfers*—(1) *Transfers included.* A transfer is described in this paragraph (c) if it would be described in paragraph (b) of this section except that either—

(i) The amount of the transfer is less than the amount determined in paragraph (b)(6) of this section, or

(ii) The transferor and transferee are not commonly controlled as described in paragraph (b)(3) of this section, or

(iii) The transferee is an organization described in sections 501(c)(3) and 501(h)(4).

(2) *Loss of exemption.* The transferee of a transfer described in this paragraph (c) will cease to be exempt under section 501(a) if the Commissioner determines on all the facts and circumstances that the transfer effected an avoidance of section 504(a). In determining whether a transfer effected an avoidance of section 504(a), the Commissioner may consider whether the transferee engages, or has engaged, in attempts to influence legislation and may also consider any of the factors enumerated in paragraph (e) of this section.

(d) *Date of loss of exempt status.* A transferee of a transfer described in paragraph (b)(c)(1)(ii), or (c)(1)(iii) of this section will cease to be exempt from tax under section 501(a) on the date that all the requirements of paragraph (b), (c)(1)(ii), or (c)(1)(iii) (other than the determination by the Commissioner) are satisfied. A transferee of a transfer described in paragraph (c)(1)(i) of this section will cease to be exempt from tax under section 501(a) on the date of the last transfer preceding notification of the transferee that the Commissioner proposes to treat the transferee as other than an exempt organization.

(e) *Transfers not in avoidance of section 504(a).* Notwithstanding paragraph (b) of this section, if, based on all the facts and circumstances, the Commissioner determines that a transfer described in paragraph (b) did not effect an avoidance of section 504(a), the transferee will not be denied exemption from tax by reason of section 504(b) and this section. In making the determination called for in the preceding sentence, the Commissioner may consider all relevant factors including:

(1) Whether enforceable and effective conditions on the transfer preclude use of any of the transferred assets for any purpose that, if it were a substantial part of an organization's activities, would be inconsistent with exemption as an organization described in section 501(c)(3);

(2) In the absence of conditions described in paragraph (e)(1) of this section, whether the transferred assets are used exclusively for purposes that are consistent with the transferor's exemption as an organization described in section 501(c)(3);

(3) Whether the assets transferred would be described in § 53.4942(a)–2(c)(3) before, as well as after, the transfer if both the transferor and transferee were private foundations;

(4) Whether and to what extent the transfer would satisfy the provisions of § 1.507–2(a) (7) and (8) if the transferor were a private foundation;

(5) Whether all of the transferred assets have been expended during a period when the transferee was not controlled (directly or indirectly) by the same person or persons who controlled the transferor; and

(6) Whether the entire amount of the transferred assets were in turn transferred, before the close of the transferee's taxable year following the taxable year in which the transferred assets were received, to one or more organizations described in section 507(b)(1)(A) none of which are controlled (directly or indirectly) by the same persons who control either the original transferor or transferee.

(f) *Control.* For purposes of section 504 and the regulations thereunder—

(1) The transferor will be presumed to control any organization with which it is affiliated within the meaning of § 56.4911–7(a), or would be if both organizations were described in section 501(c)(3), and

(2) The transferee will be treated as controlled (directly or indirectly) by the same person or persons who control the transferor if the transferee would be treated as controlled under section 53.4942(a)–3(a)(3), for which purpose the transferor shall be treated as a private foundation.

Par. 8. Section 1.6033–2 is amended by adding paragraph (a)(2)(ii)(*k*). This added provision reads as follows:

§ 1.6033–2 Returns by exempt organizations; taxable years beginning after December 31, 1969.

(a) *In general.* * * *

(2) * * *

(ii) * * *

(*k*) Its lobbying expenditures, grass roots expenditures, exempt purpose expenditures, lobbying nontaxable amount, and grass roots nontaxable amount for the taxable year and for prior taxable years that are base years (within the meaning of § 1.501(h)–3(c)(7)), if the organization has an election under section 501(h) in effect for the taxable year. An organization that is a member of an affiliated group of organizations (as defined in § 56.4911–7(e)) but that is not a member of a limited affiliated group (as defined in § 56.4911–10(b)) shall report this information based on the expenditures of all members of the group during the taxable year of the group that ends with or within the member's taxable year and for prior taxable years of the group that are base years (within the meaning of § 56.4911–9(b)). For additional information required to be furnished by members of an affiliated group of organizations, and by controlling

members in a limited affiliated group, see §§ 56.4911–9(d) and 56.4911–10(f)(1), respectively.

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TEMPORARY INCOME TAX REGULATIONS UNDER THE TAX REFORM ACT OF 1976

PART 7—[AMENDED]

Par. 9. The authority citation for Part 7 continues to read in part:

Authority: 26 U.S.C. 7805. * * *

Par. 10. In § 7.0, paragraph (c)(4) is removed and paragraph (d) is amended by removing ", (c)(4)" from the first parenthetical phrase in the first sentence.

ESTATE TAX REGULATIONS

PART 20—[AMENDED]

Par. 11. The authority citation for part 20 continues to read in part:

Authority: 26 U.S.C. 7805. * * *

Par. 12. Section 20.2055–1(a)(2) is revised to read as follows:

§ 20.2055–1 Deduction for transfers for public, charitable, and religious uses; in general.

(a) *General rule.* * * *

(2) To or for the use of any corporation or association organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes (including the encouragement of art and for the prevention of cruelty to children or animals), if no part of the net earnings of the corporation or association inures to the benefit of any private stockholder or individual (other than as a legitimate object of such purposes), if the organization is not disqualified for tax exemption under section 501(c)(3) by reason of attempting to influence legislation, and if, in the case of transfers made after December 31, 1969, it does not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of any candidate for public office.

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GIFT TAX REGULATIONS

PART 25—[AMENDED]

Par. 13. The authority citation for part 25 continues to read in part:

Authority: 26 U.S.C. 7805. * * *

Par. 14. In § 25.2522(a)–1, paragraph (a)(2) is revised to read as follows:

§ 25.2522(a)–1 Charitable and similar gifts; citizens or residents.

(a) * * *

(2) Any corporation, trust, community chest, fund, or foundation organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, including the encouragement of art and the prevention of cruelty to children or animals, if no part of the net earnings of the organization inures to the benefit of any private shareholder or individual, if it is not disqualified for tax exemption under section 501(c)(3) by reason of attempting to influence legislation, and if, in the case of gifts made after December 31, 1969, it does not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of any candidate for public office.

* * * * *

Par. 15. In § 25.2522(a)–1, paragraph (b)(2) is revised to read as follows:

§ 25.2522(a)–1 Charitable and similar gifts; citizens or residents.

(b) * * *

(2) It must not be disqualified for tax exemption under section 501(c)(3) by reason of attempting to influence legislation.

* * * * *

FOUNDATION AND SIMILAR EXCISE TAXES

PART 53—[AMENDED]

Par. 16. The authority citation for part 53 continues to read in part:

Authority: 26 U.S.C. 7805. * * *

Par. 17. Section 53.4945–2 is amended as follows:

1. Paragraph (a)(5)(i) is revised to read as set forth below and paragraph (a)(5)(iii) is removed;

2. Paragraphs (a)(6) and (a)(7) are added as set forth below; and

3. In paragraph (d)(1)(iv), the last sentence is revised to read as set forth below.

§ 53.4945–2 Propaganda influencing legislation.

(a) *Propaganda influencing legislation, etc.* * * *

(5) *Grants to public organizations*—(i) *In general.* A grant by a private foundation to an organization described in section 509(a) (1), (2), or (3) does not constitute a taxable expenditure by the foundation under section 4945(d), other than under section 4945(d)(1), if the grant by the private foundation is not earmarked to be used for any activity described in section 4945(d) (2) or (5), is not earmarked to be used in a manner which would violate section 4945(d) (3) or (4), and there does not exist an agreement, oral or written, whereby the grantor foundation may cause the grantee to engage in any such prohibited activity or to select the recipient to which the grant is to be devoted. For purposes of this subdivision, a grant by a private foundation is earmarked if the grant is given pursuant to an agreement, oral or written, that the grant will be used for specific purposes. For the expenditure responsibility requirements with respect to organizations other than those described in section 509(a) (1), (2), or (3), see § 53.4945–5. For rules for determining whether grants to public charities are taxable expenditures under section 4945(d)(1), see paragraphs (a)(6) and (a)(7) of this section.

* * * * *

(6) *Grants to public organizations that attempt to influence legislation*—(i) *In general.* A grant made by a private foundation to an organization described in section 509(a) (1), (2), or (3) (a "public charity" for purposes of paragraphs (a) (6) and (7) of this section), does not constitute a taxable expenditure under section 4945(d)(1) if it meets the requirements of this paragraph (a)(6).

(ii) *General support grant.* A general support grant by a private foundation to a public charity is not a taxable expenditure by the private foundation under section 4945(d)(1) to the extent that—

(A) The grant is not earmarked, within the meaning of § 56.4911–4(f)(4), to be used in connection with an attempt to influence legislation, and

(B) The amount of the grant (as defined in paragraph (a)(6)(iv)(A) of this section)) does not exceed the greater of the amount expended by the grantee in the taxable year preceding the year of the grant or the amount budgeted for the year of the grant by the grantee for the sum of expenditures that constitute exempt purpose expenditures (within the meaning of § 56.4911–4) other than lobbying expenditures (within the meaning of § 56.4911–2(a)), plus expenditures for fund raising (see § 56.4911–4(f)(1)).

(iii) *Specific project grant.* A grant by a private foundation to fund a specific project of a public charity is not a taxable expenditure by the foundation under section 4945(d)(1) to the extent that —

(A) The grant is not earmarked, within the meaning of § 56.4911–4(f)(4), to be used in connection with an attempt to influence legislation, and

(B) The amount of the grant (as defined in paragraph (a)(6)(iv)(B) of this section) does not exceed the amount

budgeted for the year of the grant by the grantee organization for specific project activities that are not attempts to influence legislation.

(iv) *Special rules.* For purposes of paragraph (a)(6) of this section, the amount of a grantor's grant is the sum of—

(A) The sum of the grantor's general support grants (if any) and all specific project grants (if any) made to the same grantee for the same taxable year of the grantee, or

(B) The sum of the grantor's general support grants (if any) plus the grant for the specific project (but not grants for other specific projects, if any) made to the same grantee for the same taxable year of the grantee, plus

(C) Each grant (if any) attributed to the grantor even if made by another private foundation. For purposes of this paragraph (a)(6)(iv)(C), a grant is attributed to one private foundation (even if made by a second foundation) only if made in the same taxable year of the grantee to the same grantee under an oral or written agreement between the private foundation to which it is attributed and the other private foundation to make the grant. A grant described in the preceding sentence is counted once by each foundation.

(7) *Grants to organizations that cease to be described in 501(c)(3)—(i) Not taxable expenditure; conditions.* A grant to a public charity (as defined in paragraph (a)(6)(i) of this section) that thereafter ceases to be an organization described in section 501(c)(3) by reason of its attempts to influence legislation is not a taxable expenditure if—

(A) The grant meets the requirements of paragraph (a)(6) of this section,

(B) The grant is made before notice of the grantee organization's loss of tax exemption is given to the public,

(C) At the time the grant is made, no foundation manager (as defined in section 4946(b)(1)) of the grantor private foundation knows (or in the case of the taxes imposed by section 4945 (a)(1) and (b)(1), has reason to know) that the grantee organization's ruling or determination letter has been or will be revoked, or is aware of the activities which would provide the basis for the revocation, and

(D) No disqualified person with respect to the private foundation, during the grantee's taxable year in which the grant is made, or the preceding or succeeding taxable year, controls, in whole or in part, the grantee organization's attempts to influence legislation.

(ii) *Examples.* The provisions of paragraphs (a)(6) and (a)(7) of this section are illustrated by the following examples:

Example (1). *W*, a private foundation, makes a general purpose grant to *Z*, a public charity described in section 509(a)(1). As an insubstantial portion of its activities, *Z* makes some attempts to influence the State legislature with regard to changes in the mental health laws. The amount of *Z*'s nonlobbying expenditures for the taxable year prior to the grant, as well as the amount budgeted for those expenditures for the taxable year of the grant, far exceed the amount of *W*'s general purpose grant. The use of the grant is not earmarked by *W* to be used in a manner which would violate section 4945(d)(1). In addition, there is no oral or written agreement whereby *W* may influence the choice by *Z* of the activity or recipient to which the grant is to be devoted. Even if the grant is subsequently devoted by *Z* to its legislative activities the grant by *W* is not a taxable expenditure under section 4945(d).

Example (2). *X*, a private foundation, makes a specific project grant to *Y* University for the purpose of conducting research on the potential environmental effects of certain pesticides. *X* does not earmark the grant for any purpose which would violate section 4945(d)(1) and there is no oral or written agreement or understanding whereby *X* may cause *Y* to engage in any activity described in section 4945(d) (1), (2), or (5), or to select any recipient to which the grant may be devoted. Further, *X* determines that *Y*'s budget for the project is reasonable and does not contain any amount for attempts to influence legislation. *Y* uses most of the funds for the research project: however, on its own volition, *Y* expends a portion of the grant funds to send a representative to testify at Congressional hearings on a specific bill proposing certain pesticide control measures. The portion of the grant funds expended with respect to the Congressional hearings is not treated as a taxable expenditure by *X* under section 4945(d)(1).

Example (3). *M*, a private foundation, makes a specific project grant of $150,000 to *P*, a public charity described in section 509(a)(1). In requesting the grant from *M*, *P* stated that the total budgeted cost of the project is $200,000, and that of this amount $20,000 is allocated to attempts to influence legislation related to the project. In making the grant, *M* did not earmark any of the funds from the grant to be used for attempts to influence legislation. *M*'s grant of $150,000 to *P* will not constitute a taxable expenditure under section 4945(d)(1) because *M* did not earmark any of the funds for attempts to influence legislation and because the amount of its grant ($150,000) does not exceed the amount allocated to specific project activities that are not attempts to influence legislation ($200,000−$20,000=$180,000).

Example (4). Assume the same facts as in example (3), except that *M*'s grant letter to *P* provides that *M* has the right to renegotiate the terms of the grant if there is a substantial deviation from those terms. This additional fact does not make *M*'s grant a taxable expenditure under section 4945(d)(1).

Example (5). Assume the same facts as in example (3), except that *M* made a specific project grant of $200,000 to *P*. Part of *M*'s grant of $200,000 will constitute a taxable expenditure under section 4945(d)(1). The amount of the grant ($200,000) exceeds by $20,000 the amount *P* allocated to specific project activities that are not attempts to influence legislation ($180,000). *M* has made a taxable expenditure of $20,000.

Example (6). Assume the same facts as example (3), except that *M* made a specific project grant of $180,000, and received from *P* an enforceable commitment that grant funds would not be used in connection with attempts to influence legislation. *M*'s grant is not a taxable expenditure under section 4945(d)(1).

Example (7). Assume the same facts as in example (3) except that *M* directed *P* to hire *A*, an individual, to expend $20,000 from the grant to engage in direct lobbying (within the meaning of § 56.4911–2(b)) and grass roots lobbying (within the meaning of § 56.4911–2(c)). *P* does not expend any other grant funds for lobbying activities. The $20,000 that is earmarked for direct lobbying and grass roots lobbying is a taxable expenditure under section 4945(d)(1).

Example (8). *R*, a public charity described in section 509(a)(1), requested *N*, a private foundation, to make a general purpose grant to it to aid *R* in carrying out its exempt purpose. In making this request, *R* notified *N* that it had elected the expenditure test under section 501(h) and that it expected to attempt to influence legislation in areas related to its exempt purpose. Since its formation, *R* generally has had exempt purpose expenditures (as defined in § 56.4911–4) in excess of $7,000,000 in each of its taxable years, and has budgeted in excess of $7,000,000 of exempt purpose expenditures for the year of the grant. *N* made a grant of $200,000 to *R*. *N* did not earmark the funds for *R*'s attempts to influence legislation. The general purpose grant by *N* does not constitute a taxable expenditure under section 4945(d)(1).

Example (9). Assume the same facts as in example (8), except that *N* learns that *R* has had excess lobbying expenditures (within the meaning of § 56.4911–1(b)) in some prior years. *N* also learns that in no year has *R*'s lobbying or grass roots expenditures (within the meaning of § 56.4911–2 (a) and (c)) exceeded the corresponding ceiling amount (within the meaning of § 1.501(h)–3(c) (3) and (6)). *N* then makes the grant to *R*. After receiving the grant, *R* spends a large portion of its funds on influencing legislation and, as a consequence, is denied exemption from tax,.as an organization described in section 501(c)(3), under section 501(h) and § 1.501(h)–3. No disqualified person with respect to N controlled, in whole or in part, *R*'s attempts to influence legislation. The general purpose grant will not constitute a taxable expenditure under section 4945(d)(1).

* * * * *

(d) *Exceptions—(1) Nonpartisans analysis, study, or research.* * * *

(iv) *Making available results of analysis, study, or research.* * * * For purposes of this paragraph (d)(1)(iv), such presentations may not be limited

to, be directed toward, or otherwise favor in any manner, persons who are interested solely in one side of a particular issue.

* * * * *

Par. 18. Title 26 is revised by adding a new Part 56 to read as follows:

PART 56—PUBLIC CHARITY EXCISE TAXES

Sec.

Authority: 26 U.S.C. 7805. Sec. 56.4911–7 also issued under 26 U.S.C. 4911(f)(3).

§ 56.4911–1 Tax on excess lobbying expenditures.

(a) *In general.* Section 4911(a) imposes an excise tax of 25 percent on the excess lobbying expenditures (as defined in paragraph (b) of this section) for a taxable year of an organization for which the expenditure test election under section 501(h) is in effect. The limit on expenditures for influencing legislation on which no tax is due from an organization for a taxable year is the lobbying nontaxable amount, or, on expenditures for influencing legislation through grass roots lobbying, the grass roots nontaxable amount (see paragraph (c) of this section). For rules concerning the application to the members of an affiliated group of organizations (as defined in § 56.4911–7(e)) of the excise tax imposed by section 4911(a), see § 56.4911–8.

(b) *Excess lobbying expenditures.* For any taxable year for which the expenditure test election under section 501(h) is in effect, the amount of an organization's excess lobbying expenditures is the greater of—

(1) The amount by which the organization's lobbying expenditures (within the meaning of § 56.4911–2(a)) exceed the organization's lobbying nontaxable amount, or

(2) The amount by which the organization's grass roots expenditures (within the meaning of § 56.4911–2(c)) exceed the organization's grass roots nontaxable amount.

(c) *Nontaxable amounts*—(1) *Lobbying nontaxable amount.* Under section 4911(c)(2), the lobbying nontaxable amount for any taxable year for which the expenditure test election is in effect is the lesser of—

(i) $1,000,000, or

(ii) To the extent of the organization's exempt purpose expenditures (within the meaning of § 56.4911–4) for that year, the sum of 20 percent of the first $500,000 of such expenditures, plus 15 percent of the second $500,000 of such expenditures, plus 10 percent of the third $500,000 of such expenditures, plus 5 percent of the remainder of such expenditures.

(2) *Grass roots nontaxable amount.* Under section 4911(c)(4), an organization's grass roots nontaxable amount for any taxable year is 25 percent of its lobbying nontaxable amount for that year.

(d) *Examples.* The provisions of this section are illustrated by the examples in § 1.501(h)–3.

(e) *Effective date.* The provisions of §§ 56.4911–1 through 56.4911–10 are effective for taxable years beginning after December 31, 1976.

§ 56.4911–2 Lobbying expenditures, expenditures for direct lobbying, and grass roots expenditures.

(a) *Lobbying expenditures.* An organization's lobbying expenditures for a taxable year for which the expenditure test election under section 501(h) is in effect are the sum of its expenditures for direct lobbying (as defined in paragraph (b) of this section) for the year and its grass roots expenditures (as defined in paragraph (c) of this section) for the year. In determining an organization's lobbying expenditures, no expenditure shall be counted twice.

(b) *Expenditures for direct lobbying defined*—(1) *Expenditures.* An expenditure for direct lobbying is any amount paid or incurred for, or in connection with, direct lobbying, or any amount treated as an expenditure for direct lobbying under paragraph (d) or (e) of this section or under § 56.4911–5, or any amount included as an expenditure for direct lobbying under § 56.4911–10(d)(2). Expenditures for direct lobbying include amounts paid or incurred as current or deferred compensation for an employee's services in connection with direct lobbying, and the allocable portion of administrative, overhead, and other general expenditures attributable to direct lobbying.

(2) *Direct lobbying communication defined.* A communication is an attempt to influence legislation through direct lobbying if the communication—

(i) Pertains to legislation being considered by a legislative body, or seeks or opposes legislation,

(ii) Reflects a view with respect to the desirability of the legislation (for this purpose, a communication that pertains to legislation but expresses no explicit view on the legislation shall be deemed to reflect a view on legislation if the communication is selectively disseminated to persons reasonably expected to share a common view of the legislation), and

(iii) Is either—

(A) With a member or employee of a legislative body, or

(B) With a government official or employee (other than a member or employee of a legislative body) who may participate in the formulation of legislation, but only if the principal purpose of the communication is to influence legislation.

(3) *Examples.* The provisions of this paragraph (b) are illustrated by the following examples:

Example (1). *P* is an organization for which the expenditure test election under section 501(h) is in effect. *P*'s employee, *A*, is assigned to approach members of Congress to gain their support for a pending bill. *A* spends several weeks researching the issue and contacting *P*'s directors to clarify *P*'s position on the bill. *P* then prints a position letter that is distributed to members of Congress. Additionally, *A* personally contacts several members of Congress or their staffs to seek support for *P*'s position on the bill. Amounts paid or incurred for, or in connection with, *A*'s research. *A*'s discussions with *P*'s directors, the position letter, and *A*'s Congressional contacts are expenditures for direct lobbying.

Example (2). Assume the same facts as in example (1), except that after *A* completes the research on the issue, it is decided by *P*'s directors that *P* will neither support nor oppose the bill. Under these circumstances, *A* has not engaged in any direct lobbying. Accordingly, *P*'s expenditures incurred for, or in connection with, *A*'s research are not expenditures for direct lobbying.

(c) *Grass roots expenditures*—(1) *Defined.* A grass roots expenditure is any amount paid or incurred for, or in connection with, grass roots lobbying, or any amount treated as a grass roots expenditure under paragraphs (d) or (e) of this section or under § 56.4911–5 or any amount included as a grass roots expenditure under § 56.4911–10(d)(3). Grass roots expenditures include amounts paid or incurred as current or deferred compensation for an employee's services in connection with grass roots lobbying, and the allocable

portion of administrative, overhead, and other general expenditures attributable to grass roots lobbying. "Grass roots lobbying" means an attempt to influence the general public, or any segment thereof, with respect to any legislation. A communication shall be considered an attempt to influence the general public, or a segment thereof, with respect to legislation if the communication—

(i) Pertains to legislation being considered by a legislative body, or seeks or opposes legislation,

(ii) Reflects a view with respect to the desirability of the legislation (for this purpose, a communication that pertains to legislation but expresses no explicit view on the legislation shall be deemed to reflect a view on legislation if the communication is selectively disseminated to persons reasonably expected to share a common view of the legislation), and

(iii) Is communicated in a form and distributed in a manner so as to reach individuals as members of the general public, that is, as voters or constituents, as opposed to a communication designed for academic, scientific, or similar purposes. A communication may meet this test even if it reaches the public only indirectly, as in a news release submitted to the media.

If any part of an advertisement constitutes grass roots lobbying, the entire amount expended for, or in connection with, the advertisement constitutes a grass roots expenditure.

(2) *Examples.* The provisions of this paragraph (c) are illustrated by the following examples:

Example (1). *L*, an organization for which the expenditure test under section 501(h) is in effect, places in local newspapers in State *W* an advertisement that asserts that lack of new capital is hurting the state's economy. The advertisement recommends that residents either invest more in local businesses or increase their savings so that funds will be available to others interested in making investments. Although the advertisement expresses a view with respect to a general problem that might receive legislative attention and is distributed in a manner so as to reach and influence many individuals, it does not constitute an attempt to influence the public with respect to legislation because it pertains to private conduct rather than legislation.

Example (2). Assume the same facts as in example (1), except that the advertisement, although not expressly calling for legislative action, also asserts that particular kinds of state tax incentives (which could not be implemented without legislation) would substantially increase capital formation. Thus, the advertisement is seeking action by the legislature and, at least in part, is addressed to individuals as voters or constituents rather than as potential investors. The advertisement reflects a view with respect to the desirability of the legislation. The advertisement constitutes an attempt to influence the public with respect to legislation, and the entire amount expended for, or in connection with, the advertisement is a grass roots expenditure.

Example (3). There is pending in the legislature of State *X* a proposal to amend certain laws concerning voting in state elections. As a public service, *M*, an organization in State *X* for which the expenditure test election is in effect places in local newspapers of general circulation an advertisement that explains both the current voting laws and the proposed amendments. The advertisement takes no position on the merits of the proposal. Under these circumstances, the advertisement does not reflect a view with respect to the desirability of the proposal and does not constitute an attempt to influence the general public with respect to the proposal.

Example (4). The legislature of State *Y* is considering a proposal to prohibit hunting on land owned by the State. *N*, an organization for which the expenditure test election is in effect, prepares a pamphlet that analyzes the proposal in detail but expresses no view on its merits. *N* arranges for distribution of the pamphlet to groups in State *Y* (with which it is not affiliated) that are opposed to hunting. The pamphlet pertains to legislation, and is deemed to reflect a view with respect to the desirability of the legislation by reason of its selective distribution to an audience reasonably expected to support the prohibition on hunting. The information is communicated in a form and distributed in a manner so as to reach individuals as voters or constituents. Expenditures for, or in connection with, the preparation and distribution of the pamphlet are grass roots expenditures.

Example (5). The legislature in State *Z* is considering a proposal to require pharmaceutical firms to test the safety of their products through certain laboratory procedures. *P* an organization in State *Z* for which the expenditure test is in effect, prepares a detailed report on the usefulness of the tests that would be required under the proposal. The report concludes that the tests specified in the proposal are poorly designed. *P* distributes copies of the report to university professors in the field of health science without suggesting that the recipients make any attempt to influence the public with respect to the proposal. Although the report pertains to legislation and implies that the legislative proposal under consideration should not be enacted, the limited distribution of the report indicates that copies were furnished to the recipients as scholars in the field rather than as members of the general public, that is, as voters or constituents. The expenditures for the report, therefore, are not grass roots expenditures.

Example (6). Assume the same facts as in example (5), except that *P* also prepares a leaflet summarizing the report and distributes both the report and the leaflet only to academics in the field of health science who are known to oppose the legislation. The academics publicize their position by using the leaflets provided by *P*. *S*, an organization described in section 501(c)(4), of which the academics are members, also publicizes its opposition to the legislation using the leaflets provided by *P*. All amounts expended by *P* in connection with the report and the leaflets are grass roots expenditures since they were not communications designed for academic, scientific, or similar purposes.

Example (7). *Q*, an organization for which the expenditure test is in effect, pays for the radio broadcast of an advertisement that refers to a current controversy involving legislation and urges citizens to "become involved." The advertisement does not discuss the merits of any legislative proposal but it does offer a free booklet which analyzes and takes positions on various legislative proposals relating to the controversy. All expenditures for, or in connection with, the advertisement and the booklet are grass roots expenditures because together they constitute an attempt by *Q* to influence the public with respect to legislation.

Example (8). *R*, an organization for which the expenditure test is in effect, makes the services of *B*, one of its paid executives, available to *S*, an organization described in section 501(c)(4) of the Code. *B* works for several weeks to assist *S* in developing materials designed to influence public opinion on legislation. In performing this work, *B* uses office space and clerical assistance provided by *R*. *R* pays full salary and benefits to *B* during this period and receives no reimbursement from *S* for these payments or for the other facilities and assistance provided. All expenditures of *R* including allocable office expenses, that are attributable to this assignment are grass roots expenditures because *B* was engaged in an attempt to influence the public on legislation.

(d) *Mixed purpose expenditures*—(1) *In general.* Except as provided in paragraphs (c)(1), (d)(2), and (d)(3) of this section, in the case of a mixed purpose expenditure, a reasonable allocation, based on all the facts and circumstances, must be made between the portion of the expenditure incurred for lobbying purposes and the portion incurred for charitable or fundraising purposes. For example, if a pamphlet has three articles of equal length, one of which constitutes an attempt to influence the general public with respect to legislation, ano two of which relate to charitable, nonlobbying purposes, the cost of printing and mailing will be considered allocated reasonably if one-third of this cost is treated as a grass roots expenditure. See § 56.4911–5 for rules with respect to certain communications with members.

(2) *Grass roots expenditures and fundraising.* If an expenditure (to which § 56.4911–5 does not apply) is made for both grass roots lobbying purposes and fundraising purposes, the entire expenditure will be treated as a grass roots lobbying expenditure. For

purposes of the preceding sentence, an expenditure for fundraising literature is not made for grass roots purposes if the fundraising literature merely mentions that the organization engages in attempts to influence legislation only to the extent consistent with section 501(c)(3) status.

(3) *Mixed lobbying.* If an expenditure (to which § 56.4911–5 does not apply) is made for both direct lobbying and grass roots lobbying purposes, the expenditure will be treated as a grass roots expenditure except to the extent that the organization demonstrates that the expenditure was incurred solely for direct lobbying purposes.

(e) *Certain transfers treated as lobbying expenditures*— (1) *Transfer earmarked for grass roots purposes.* A transfer is a grass roots expenditure to the extent that it is earmarked (as defined in § 56.4911–4(f)(4)) for grass roots lobbying purposes and is not described in § 56.4911–4(e).

(2) *Transfer earmarked for direct and grass roots lobbying.* A transfer that is earmarked for direct lobbying purposes or for direct lobbying and grass roots lobbying purposes is treated as a grass roots expenditure in full except to the extent the transferor demonstrates that the amounts transferred were expended for direct lobbying purposes. This paragraph (e)(2) shall not apply to any expenditure described in § 56.4911–4(e).

(3) *Certain transfers to organizations that lobby.* A transfer that is neither a controlled grant (as defined in § 56.4911–4(f)(3)) nor an expenditure described is § 56.4911–4(e) and that is made to an organization not described in section 501(c)(3) that engages in attempts to influence legislation is treated as a grass roots expenditure to the extent of the lesser of the amount of the transfer or the transferee's expenditures for grass roots lobbying. If the amount of the transfer exceeds the transferee's expenditures for grass roots lobbying, the excess will be treated as an expenditure for direct lobbying to the extent of the transferee's expenditures for direct lobbying. In applying the preceding two sentences, the expenditures of the transferee will be determined as if the regulations under section 4911 applied to the transferee.

(f) *Definitions.* For purposes of section 4911 and the regulations thereunder—

(1) *Legislation.* The term "legislation" includes action by the Congress, any state legislature, any local council, or similar legislative body, or by the public in a referendum, initiative, constitutional amendment, or similar procedure. The term "legislation" includes a proposed treaty required to be submitted by the President to the Senate for its advice and consent from the time the President's representative begins to negotiate its position with the prospective parties to the proposed treaty.

(2) *Action.* The term "action" is limited to the introduction, amendment, enactment, defeat or repeal of Acts, bills, resolutions, or similar items.

(3) *Legislative body.* The term "legislative body" does not include executive, judicial, or administrative bodies.

(4) *Administrative bodies.* The term "administrative bodies" includes school boards, housing authorities, sewer and water districts, zoning boards, and other similar Federal, State, or local special purpose bodies, whether elective or appointive.

§ 56.4911–3 Activities not attempts to influence legislation.

(a) *In general.* This section describes activities that are not attempts to influence legislation for purposes of section 4911. Accordingly, expenditures for, or in connection with, activities described in this section are not lobbying expenditures under § 56.4911–2.

(b) *Nonpartisan analysis, study or research.* Under section 4911(d)(2)(A), "influencing legislation" does not include making available the results of nonpartisan analysis, study, or research. For guidance in determining whether an amount is paid or incurred for, or in connection with, making available the results of nonpartisan analysis, study, or research see § 53.4945–2(d)(1).

(c) *Technical advice or assistance.* Under section 4911(d)(2)(B), "influencing legislation" does not include providing technical advice or assistance to a governmental body, a governmental committee, or a subdivision of either in response to a written request by the body, committee, or subdivision. For guidance in determining whether an amount is paid or incurred for, or in connection with, providing technical advice or assistance, see § 53.4945–2(d)(2).

(d) *Self-defense*—(1) *In general.* Under section 4911(d)(2)(C), "influencing legislation" does not include an appearance before or communication with any legislative body with respect to a possible action by the body that might affect the existence of the organization, its powers and duties, its tax-exempt status, or the deductibility of contributions to the organization. For guidance in determining whether an amount is paid or incurred for, or in connection with, these communications or appearances, see § 53.4945–2(d)(3). See also, paragraphs (d)(2), (d)(3), and (d)(4) of this section concerning appearances on behalf of other organizations.

(2) *Affiliated group of organizations.* For an organization that is a member of an affiliated group of organizations (within the meaning of § 56.4911–7(e)), "influencing legislation" does not include appearances before, or communications with, a legislative body with respect to a possible action by the body that might affect the existence of any other member of the group, its powers and duties, its tax-exempt status, or the deductibility of contributions to it.

(3) *Activities on behalf of member organizations.* For an organization that has a membership consisting solely of other organizations that are described in section 501(c)(3), "influencing legislation" does not include appearances before, or communications with, any legislative body with respect to a possible action by the body which might affect the existence of one or more of the member organizations, their powers, duties, or tax-exempt status, or the deductibility of contributions to one or more of the member organizations.

(4) *Limited affiliated group of organizations.* For an organization that is a member of a limited affiliated group of organizations under § 56.4911–10, "influencing legislation" does not include appearances before, or communications with, the Congress of the United States with respect to a possible action by the Congress that might affect the existence of any member of the limited affiliated group, its powers and duties, tax-exempt status, or the deductibility of contributions to it.

§ 56.4911–4 Exempt purpose expenditures.

(a) *Application.* This section provides rules under section 4911(e) for determining an organization's "exempt purpose expenditures" for a taxable year for purposes of section 4911(c)(2) and § 56.4911–1(c)(2), which define an organization's lobbying nontaxable amount by reference to its exempt purpose expenditures. In determining an organization's exempt purpose expenditures, no expenditure shall be counted twice by an organization.

(b) *Included expenditures.* Amounts paid or incurred by an organization that are exempt purpose expenditures include—

(1) Amounts paid or incurred to accomplish a purpose enumerated in section 170(c)(2)(B), including (but not limited to) the amount of any transfer made by the organization (other than a

transfer described in paragraph (e) of this section) to another organization to accomplish the transferor's exempt purposes, and including amounts expended by an organization out of transfers (other than a transfer described in paragraph (e) of this section) for which the organization is the transferee,

(2) Amounts paid or incurred as current or deferred compensation for an employee's services in connection with a purpose enumerated in section 170(c)(2)(B).

(3) The allocable portion of administrative overhead, and other general expenditures attributable to the accomplishment of a purpose enumerated in section 170(c)(2)(B),

(4) Lobbying expenditures (as defined in § 56.4911–2(a)) whether or not for a purpose enumerated in section 170(c)(2)(B),

(5) Amounts paid or incurred for, or in connection with, activities described in § 56.4911–3,

(6) Amounts paid or incurred for, or in connection with, activities described in § 56.4911–5 that are not lobbying expenditures, and

(7) A reasonable allowance for exhaustion, wear and tear, obsolescence. or amortization, of assets to the extent used for one or more of the purposes described in paragraphs (b) (1) through (6) of this section, computed on a straight-line basis (for this purpose, an allowance for depreciation will be treated as reasonable if based on a useful life that would satisfy section 312(k)(3)(A) as in effect on January 1, 1985).

(c) *Excluded expenditures.* Notwithstanding paragraph (b) of this section, exempt purpose expenditures do not include—

(1) Amounts paid or incurred that are neither expenditures to accomplish a purpose enumerated in section 170(c)(2)(B) nor lobbying expenditures (as defined in § 56.4911–2(a)),

(2) The amount of any transfer described in paragraph (e) of this section,

(3) Amounts paid to or incurred for a separate fund raising unit (as defined in paragraph (f)(2) of this section) of an organization or of an affiliated organization (see § 56.4911–7(a)),

(4) Amounts paid to or incurred for any person not an employee, or any organization not an affiliated organization, if paid or incurred primarily for fund raising,

(5) Amounts paid or incurred that are properly chargeable to a capital account, determined in accordance with the principles that apply under sections 312(k) (1) and (3) (as in effect on January 1, 1985), to amounts paid or incurred in a trade or business,

(6) Amounts paid or incurred for a tax that is not imposed in connection with the organization's efforts to accomplish a purpose described in section 170(c)(2)(B), such as the taxes imposed under sections 511(a)(1) and 4911(a), and

(7) Amounts paid or incurred in connection with the production of income, whether or not described in section 512(a)(1).

(d) *Certain transfers treated as exempt purpose expenditures*—(1) An organization's transfer will be treated as an exempt purpose expenditure under paragraph (b)(1) of this section if it is—

(i) Described in either paragraph (d)(2) or (d)(3) of this section, and

(ii) Not described in paragraph (e) of this section.

(2) A transfer is described in this paragraph (d)(2) if it is made to an organization described in section 501(c)(3) in furtherance of the transferor's exempt purposes and is not earmarked for any purpose other than a purpose described in section 170(c)(2)(B). Thus, a payment of dues by a local or state organization to, respectively, a state or national organization that is described in section 501(c)(3) is considered an exempt purpose expenditure of the transferor to the extent it is not otherwise earmarked.

(3) A transfer is described in this paragraph (d)(3) if it is a controlled grant (as defined in paragraph (f)(3) of this section), but only to the extent of the amounts that are paid or incurred by the transferee that would be exempt purpose expenditures if paid or incurred by the transferor.

(e) *Transfers not exempt purpose expenditures*—(1) An organization's transfer is described in this paragraph (e) if it is described in one of paragraphs (e)(2) through (e)(4).

(2) A transfer is described in this paragraph (e)(2) if it is made to a member of any affiliated group (as defined in § 56.4911–7(e)) of which the transferor is a member.

(3) A transfer is described in this paragraph (e)(3) if the Commissioner determines that the transfer artificially inflates the amount of the transferor's or transferee's exempt purpose expenditures. In general, the Commissioner will make that determination if a substantial purpose of a transfer is to inflate those exempt purpose expenditures. A transfer described in this paragraph will not be considered an exempt purpose expenditure of the transferor, but will be an exempt purpose expenditure of the transferee to the extent that the transferee expends the transfer in the active conduct of its charitable activities or attempts to influence legislation. Standards similar to those found in § 53.4942(b)–1(b) may be applied in determining whether the transferee has expended amounts in the "active conduct" of its charitable activities or attempts to influence legislation.

(4) A transfer is described in this paragraph (e)(4) if it is not a controlled grant and is made to an organization not described in section 501(c)(3) that does not attempt to influence legislation.

(f) *Definitions*—(1) For purposes of paragraph (c) of this section, "fund raising" includes—

(i) Soliciting dues or contributions from members of the organization, from persons whose dues are in arrears, or from the general public,

(ii) Soliciting grants from businesses or other organizations, including organizations described in section 501(c)(3), or

(iii) Soliciting grants from a governmental unit referred to in section 170(c)(1), or any agency or instrumentality thereof.

(2) For purposes of paragraph (c) of this section, a separate fund raising unit of any organization must consist of either two or more individuals a substantial part of whose time is spent on fund raising for the organization, or any separate accounting unit of the organization that is devoted to fund raising.

(3) For purposes of this section, a "controlled grant" is a grant made by an eligible organization described in § 1.501(h)–2(b) to an organization not described in section 501(c)(3) that meets the following requirements:

(i) The donor limits the grant to a specific project of the recipient that is in furtherance of the donor's exempt purposes; and

(ii) The donor maintains records to establish that the grant is used in furtherance of the donor's exempt purposes.

(4) A transfer, including a grant or payment of dues, is "earmarked" for a specific purpose—

(i) To the extent that the transferor directs the transferee to add the amount transferred to a fund established to accomplish the purpose, or

(ii) To the extent of the amount transferred or, if less, the amount agreed upon to be expended to accomplish the purpose, if there exists an agreement, oral or written, whereby the transferor may cause the transferee to expend amounts to accomplish the purpose or whereby the transferee agrees to expend an amount to accomplish the purpose.

(g) *Example.* The provisions of this section are illustrated by the following example:

Example. Organization *X* is an exempt organization described in section 501(c)(3) that is organized for the purpose of rehabilitating alcoholics. *X* elected to be subject to the provisions of section 501(h) in 1981. For 1981, *X* had the following expenditures that are included in its exempt purpose expenditures to the extent indicated.

Description	Total	Includible
Cost of real estate purchased for use as half-way house for alcoholics, attributable to the following:		
Land	$30,000	0
Building	200,000	0
Depreciation 40-year useful life	0	$5,000
Expenses of operating its halfway house	170,000	170,000
Administrative expenses of the organization allocated to the operation of its half-way house	95,000	95,000
Depreciation and allowances for equipment	10,000	10,000
Expenses related to attempts to influence legislation (lobbying expenditures)	40,000	40,000
Amounts paid to *Z* by the organization for fundraising	35,000	0
Total		320,000

Note.—For 1981, *X*'s exempt purpose expenditures total $320,000. The $35,000 paid by *X* to *Z* for fund raising is not included in the exempt purpose expenditures total. All lobbying expenses are included in full. Only depreciation computed on a straight-line basis is included in exempt purpose expenditures.

§ 56.4911-5 Communications with members.

(a) *In general.* For purposes of section 4911 and § 56.4911-2, expenditures in connection with certain communications between an organization and its members are treated as expenditures for direct lobbying, as grass roots expenditures, or as other than lobbying expenditures in accordance with this section.

(b) *Communication directed only to members; excepted communication.* Expenditures for, or in connection with, a communication that pertains to legislation or proposed legislation are not lobbying expenditures if the communication satisfies the following requirements:

(1) The communication is directed only to members of the organization;

(2) The legislation or proposed legislation to which the communication relates is of direct interest to the organization and its members;

(3) The communication does not directly encourage the member to engage in direct lobbying (whether individually or through the organization); and

(4) The communication does not directly encourage the member to engage in grass roots lobbying, whether individually or through the organization.

(c) *Communication directed only to members: expenditures for direct lobbying.* Expenditures for, or in connection with, a communication that reflects a view with respect to the desirability of legislation and that satisfies the requirements of subparagraphs (1), (2), and (4) of paragraph (b) of this section, but does not satisfy the requirements of subparagraph (3) of such paragraph (b), are treated as expenditures for direct lobbying.

(d) *Communication directed only to members; grass roots expenditures.* Expenditures for, or in connection with, a communication that reflects a view with respect to the desirability of legislation and that satisfies the requirements of subparagraphs (1) and (2) of paragraph (b) of this section, but does not satisfy the requirements of subparagraph (4) of such paragraph (b), are treated as grass roots expenditures (whether or not the communication satisfies the requirements of subparagraph (3) of such paragraph (b)).

(e) *Written communications directed to members and nonmembers*—(1) *In general.* Expenditures for, or in connection with, any written communication that is designed primarily for members of an organization (but not directed only to members) and that reflects a view with respect to the desirability of legislation or proposed legislation of direct interest to the organization and its members, are treated as expenditures for direct lobbying or grass roots expenditures in accordance with paragraph (e)(2) or (e)(3) of this section.

(2) *Direct lobbying encouraged*—(i) *Lobbying expenditure amount.* If a written communication described in paragraph (e)(1) of this section directly encourages readers to engage individually or through the organization in direct lobbying but does not encourage them to engage in grass roots lobbying, the cost of the communication is allocated between expenditures for direct lobbying and grass roots expenditures in accordance with paragraphs (e)(2) (ii) and (iii) of this section. The portion of the cost to be allocated includes all costs of preparing all the material with respect to which readers are urged to engage in direct lobbying plus the mechanical and distribution costs attributable to the lineage devoted to this material (see § 1.512(a)-1(f)(6)).

(ii) *Grass roots amount.* The amount allocable as a grass roots expenditure for a communication described in paragraph (e)(1) of this section is the amount calculated in paragraph (e)(2)(i) of this section multiplied by the sum of the nonmember subscribers percentage and the all other distribution percentage, both as defined in paragraph (f)(7) of this section. Solely for purposes of the allocation described in this paragraph (e)(2)(ii), the nonmember subscribers percentage is treated as zero unless it is greater than 15% of total distribution.

(iii) *Direct lobbying amount.* The amount allocable as an expenditure for direct lobbying for a communication described in paragraph (e)(1) of this section is the excess of the amount described in paragraph (e)(2)(i) of this section over the amount described in paragraph (e)(2)(ii) of this section.

(3) *Grass roots expenditure if grass roots lobbying encouraged.* The portion of the cost of a written communication described in paragraph (e)(1) of this section that constitutes a grass roots expenditure is—

(i) If the communication directly encourages readers to engage individually or collectively (whether through the organization or otherwise) in grass roots lobbying (whether or not it also encourages readers to engage in direct lobbying), the grass roots expenditure includes all the costs of preparing all the material with respect to which readers are urged to engage in grass roots lobbying plus the mechanical and distribution costs attributable to the lineage devoted to this material (see § 1.512(a)-1(f)(6)); or

(ii) If the communication does not directly encourage readers to engage in direct lobbying (determined by applying the rule in paragraph (f)(6) of this section) and does not encourage readers to engage in grass roots lobbying, whether individually, collectively, through the organization, or otherwise, the amount described in paragraph (e)(2)(ii) of this section.

(f) *Definition and special rules.* For purposes of the regulations under section 4911-

(1) *Member; general rule.* A person is a member of an organization if the person—

(i) Pays dues or makes a contribution of more than a nominal amount.

(ii) Makes a contribution of more than a nominal amount of time, or

(iii) Is one of a limited number of "honorary" or "life" members who have more than a nominal connection with the organization and who have been chosen for a valid reason (such as length of service to the organization or involvement in activities forming the basis of the organization's exemption) unrelated to the organization's dissemination of information to its members.

(2) *Member; special rule.* A person not a member of an organization within the meaning of paragraph (f)(1) of this section may be treated as a member if the organization demonstrates to the satisfaction of the Internal Revenue Service that there is a good reason for its membership requirements not meeting the requirements of such paragraph (f)(1), and that its membership requirements do not operate to permit an abuse of the rules described in this section.

(3) *Member; affiliated group of organizations.* For purposes of this section, a person who is a member of an organization that is a member of an affiliated group of organizations (within the meaning of § 56.4911–7(e)) is treated as a member of each organization in the affiliated group.

(4) *Member; limited affiliated group of organizations.* For purposes of this section, a person who is a member of an organization that is a member of a limited affiliated group of organizations (within the meaning of § 56.4911–10(b)) is treated as a member of each organization in the limited affiliated group, but only to the extent that the communication relates to a national legislative issue (within the meaning of § 56.4911–10(g)).

(5) *Subscriber.* A person is a subscriber to a written communication if—

(i) The person is a member of the publishing organization and the membership dues expressly include the right to receive the written communication, or

(ii) The person has affirmatively expressed a desire to receive the written communication and has paid more than a nominal amount for the communication.

(6) *"Self-defense" exception for communications with members.* For purposes of paragraphs (b)(3), (e)(2)(i), and (e)(3)(ii) of this section, a communication that directly encourages a member to engage in direct lobbying activities that are described in section 4911(d)(2)(C) and that would not be attempts to influence legislation if engaged in directly by the organization is treated as a communication that does not directly encourage a member to engage in direct lobbying.

(7) *Percentages of total distribution.* With respect to a communication described in paragraph (e)(1) of this section—

(i) "Member percentage" means the percentage of total distribution that represents distribution of a single copy to any member;

(ii) "Nonmember subscribers percentage" means the percentage of total distribution that represents distribution to nonmember subscribers (including libraries); and

(iii) "All other distribution percentage" means 100% reduced by the sum of the member percentage and the nonmember subscribers percentage.

§ 56.4911–6 Records of lobbying and grass roots expenditures.

(a) *Records of lobbying expenditures.* An organization to which the expenditure test under section 501(h) applies for a taxable year must keep a record of its lobbying expenditures for the taxable year. Lobbying expenditures of which an organization must keep a record include the following:

(1) Expenditures for grass roots lobbying, as described in paragraph (b) of this section;

(2) Amounts directly paid or incurred for direct lobbying, including payments to another organization earmarked for direct lobbying, fees and expenses paid to individuals or organizations for direct lobbying, and printing, mailing, and other direct costs of reproducing and distributing materials used in direct lobbying;

(3) The portion of amounts paid or incurred as current or deferred compensation for an employee's services in connection with direct lobbying;

(4) Amounts paid for out-of-pocket expenditures incurred on behalf of the organization and in connection with direct lobbying, whether or not incurred by an employee;

(5) The allocable portion of administrative, overhead, and other general expenditures attributable to direct lobbying;

(6) Expenditures for publications or for communications with members to the extent the expenditures are treated as expenditures for direct lobbying under § 56.4911–5; and

(7) Expenditures for direct lobbying of a controlled organization (within the meaning of § 56.4911–10(c)) to the extent included by a controlling organization (within the meaning of § 56.4911–10(c)) in its lobbying expenditures.

(b) *Records of grass roots expenditures.* An organization to which the expenditure test under section 501(h) applies for a taxable year must keep a record of its grass roots expenditures for the taxable year. Grass roots expenditures of which an organization must keep a record include the following:

(1) Amounts directly paid or incurred for grass roots lobbying, including payments to other organizations earmarked for grass roots lobbying, fees and expenses paid to individuals or organizations for grass roots lobbying, and the printing, mailing, and other direct costs of reproducing and distributing materials used in grass roots lobbying;

(2) The portion of amounts paid or incurred as current or deferred compensation for an employee's services in connection with grass roots lobbying;

(3) Amounts paid for out-of-pocket expenditures incurred on behalf of the organization and in connection with grass roots lobbying, whether or not incurred by an employee;

(4) The allocable portion of administrative, overhead, and other general expenditures attributable to grass roots lobbying;

(5) Expenditures for publications or communications that are treated as expenditures for grass roots lobbying under § 56.4911–5; and

(6) Expenditures for grass roots lobbying of a controlled organization (within the meaning of § 56.4911–10(c)) to the extent included by a controlling organization (within the meaning of § 56.4911–10(c)) in its grass roots expenditures.

§ 56.4911–7 Affiliated group of organizations.

(a) *Affiliation between two organizations*—(1) *In general.* For purposes of the regulations under section 4911, two organizations are affiliated, subject to the limitation described in paragraph (a)(2) of this section, if one organization is able to control action on legislative issues by the other by reason of interlocking governing boards (see paragraph (b) of this section) or by reason of provisions of the governing instruments of the controlled organization (see paragraph (c) of this section). The ability of the controlling organization to control action on legislative issues by the controlled organization is sufficient to establish that the organizations are affiliated; it is not necessary that the control be exercised.

(2) *Organizations not described in section 501(c)(3).* Two organizations, neither of which is described in section 501(c)(3), are affiliated only if there exists at least one organization described in section 501(c)(3) that is affiliated with both organizations.

(3) *Action on legislative issues.* For purposes of this section, the term "action on legislative issues" includes taking a position in the organization's name on legislation, authorizing any person to take a position in the organization's name on legislation, or authorizing any lobbying expenditures.

The phrase does not include actions taken merely to correct unauthorized actions taken in the organization's name.

(b) *Interlocking governing boards*—(1) *In general.* Two organizations have interlocking governing boards if one organization (the controlling organization) has a sufficient number of representatives (within the meaning of paragraph (b)(5) of this section) on the governing board of the second organization (the controlled organization) so that by aggregating their votes, the representatives of the controlling organization can cause or prevent action on legislative issues by the controlled organization. If two organizations have interlocking governing boards, the organizations are affiliated without regard to how or whether the representatives of the controlling organization vote on any particular matter.

(2) *Majority or quorum.* Except as provided in paragraph (b) (3) or (4) of this section, the number of representatives of an organization (the controlling organization) who are members of the governing board of a second organization (the controlled organization) will be presumed sufficient to cause or prevent action on legislative issues by the controlled organization if that number either—

(i) Constitutes a majority of incumbents on the governing board, or

(ii) Constitutes a quorum, or is sufficient to prevent a quorum, for acting on legislative issues.

(3) *Votes required under governing instrument or local law.* Except as provided in paragraph (b)(4) of this section, if under the governing documents of an organization (the controlled organization), it can be determined that a lesser number of votes than the number described in paragraph (b)(2) of this section is necessary or sufficient to cause or to prevent action on legislative issues, the number of representatives of the controlling organization who are members of the governing board of the controlled organization will be considered sufficient to cause or prevent action on legislative issues if it equals or exceeds that number.

(4) *Representatives constituting less than 15% of governing board.* Notwithstanding paragraph (b) (2) or (3) of this section, if the number of representatives of one organization is less than 15 percent of the incumbents on the governing board of a second organization, the two organizations are not affiliated by reason of interlocking governing boards.

(5) *Representatives.* (i) This paragraph (b)(5) describes members of the governing board of one organization (the controlled organization) who are considered representatives of a second organization (the controlling organization). Under this paragraph (b)(5), a member of the governing board of a controlled organization may be a representative of more than one controlling organization. A person with no authority to vote on any issue being considered by the governing board is not a representative of any organization.

(ii) A board member of one organization (the controlled organization) is a representative of a second organization (the controlling organization) if the controlling organization has specifically designated that person to be a board member of the controlled organization. For purposes of this paragraph (b)(5)(ii) and paragraph (b)(5)(iii) of this section, a board member of the controlled organization is specifically designated by the controlling organization if the board member is selected by virtue of the right of the controlling organization, under the governing instruments of the controlled organization, either to designate a person to be a member of the controlled organization's governing board, or to select a person for a position that entitles the holder of that position to be a member of the controlled organization's governing board.

(iii) A board member of one organization who is specifically designated by a second organization, a majority of the governing board of which is made up of representatives of a third organization, is a representative of the third organization as well as being a representative of the second organization pursuant to paragraph (b)(5)(ii) of this section.

(iv) A board member of one organization who is also a member of the governing board of a second organization is a representative of the second organization.

(v) A board member of one organization who is an officer or paid executive staff member of a second organization is a representative of the second organization. Although titles are significant in determining whether a person is a member of the executive staff of an organization, any employee of an organization who possesses authority commonly exercised by an executive is considered an executive staff member for purposes of this paragraph (b)(5)(v).

(c) *Governing instrument.* One organization (the "controlling" organization) is affiliated with a second organization (the "controlled" organization) by reason of the governing instruments of the controlled organization if the governing instruments of the controlled organization expressly or by implication limit the independent action of the controlled organization on a legislative issue by requiring that it take into account the position of the controlling organization on that issue. Any limitation on the independent action of the controlled organization on a legislative issue is sufficient to establish the existence of the relationship of affiliation. It is immaterial how or whether the limiting power is exercised.

(d) *Three or more organizations affiliated*—(1) *Two controlled organizations affiliated.* If a controlling organization described in this section is affiliated with each of two or more controlled organizations described in this section, then the controlled organizations are affiliated with each other.

(2) *Chain rule.* If one organization is a controlling organization described in this section with respect to a second organization and that second organization is a controlling organization with respect to a third organization, then the first organization is affiliated with the third.

(e) *Affiliated group of organizations*—(1) *Defined.* For purposes of the regulations under section 4911, an affiliated group of organizations is a group of organizations—

(i) Each of which is affiliated with every other member for at least thirty days of the taxable year of the affiliated group (determined without regard to the election provided for in paragraph (e)(5) of this section),

(ii) Each of which is an eligible organization (within the meaning of § 1.501(h)–2(b)(1)), and

(iii) At least one of which is an electing member organization (within the meaning of paragraph (e)(4) of this section).

Each organization in a group of organizations that satisfies the requirements of the preceding sentence is a member of the affiliated group of organizations for the taxable year of the affiliated group.

(2) *Multiple membership.* For any taxable year of an organization, it may be a member of two or more affiliated groups of organizations.

(3) *Taxable year of affiliated group.* If all members of an affiliated group have the same taxable year, that taxable year is the taxable year of the affiliated group. If the members of an affiliated group do not all have the same taxable year, the taxable year of the affiliated

group is the calendar year, unless the election under paragraph (e)(5) of this section is made.

(4) *Electing member organization.* For purposes of the regulations under section 4911, an "electing member organization" is an organization to which the expenditure test election under section 501(h) applies on at least one day of the taxable year of the affiliated group of which it is a member. For purposes of the preceding sentence (and notwithstanding § 1.501(h)–2(a)), the expenditure test is not considered to apply to the organization on any day before the date on which it files the Form 5768 making the expenditure test election.

(5) *Election of member's year as group's taxable year.* The taxable year of an affiliated group may be determined according to the provisions of this paragraph (e)(5) if all of the members of the affiliated group so elect. Under this paragraph (e)(5), each member organization shall apply the provisions of section 501(h) and 4911, and the regulations thereunder (unless the regulations provide otherwise), by treating its own taxable year as the taxable year of the affiliated group. The election may be made by an electing member organization by attaching to its annual return a statement from itself and every other member of the affiliated group that contains: the organization's name, address, and employer identification number; and its signed consent to the election provided for in this paragraph (e)(5). The election must be made no later than the due date of the first annual return of any electing member for its taxable year for which the member is liable for tax under section 4911(a), determined under § 56.4911–8(d). The election may not be made or revoked after the due date of the return referred to in the preceding sentence except upon such terms and conditions as the Commissioner may prescribe.

(f) *Examples.* The provisions of this section are illustrated by the following examples.

Example (1). *M, N,* and *O* are eligible organizations within the meaning of § 1.501(h)–2(b)(1). Each has a governing board made up of nine members. Five members on the board of *N* are also members of the board of *M*. *N* designates five individuals from among its board, officers, and executive staff members to serve on the board of *O*. *M* is affiliated with *N*, *N* is affiliated with *O*, and *M* is affiliated with *O*.

Example (2). *X*, an eligible organization, has a board consisting of 10 members. Five unaffiliated tax-exempt organizations each designate two individuals to serve on the governing board of *X*. A simple majority of the board of *X* is a quorum and may establish *X*'s position on legislative issues. *X* is not affiliated with any of the five autonomous organizations by reason of interlocking governing boards.

Example (3). *P* and *Q* are eligible organizations. The governing instruments of *Q* indicate that it will not take a position on legislation if *P* disapproves of the position. In addition, there is regular correspondence between *P* and *Q* with regard to positions on legislation. *P* is affilated with *Q* regardless of whether *P* has ever vetoed a position taken by *Q*.

Example (4). The governing board of organization *R* resolves to adopt the position taken on legislative issues by organization *S*. *R* and *S* are eligible organizations and do not have interlocking governing boards. The governing instruments of *R* do not mention organization *S* and do not indicate that *R* is to be bound by the decisions on legislation of any organization. *R* and *S* are not affiliated.

Example (5). Organization *Z* is bound, under the terms of its governing instruments, by the legislative positions of Organization *Y*. Organization *Y*, however, is bound, under the terms of its governing instruments, by the legislative positions of Organization *X*. Organization *X* is affiliated with *Y* and *Z*; *Y* is affiliated with *X* and *Z*; and *Z* is affiliated with *X* and *Y*.

Example (6). Organizations *T* and *U* have interlocking boards of directors. *T* is the controlling organization. Organization *V* is bound, under the terms of its governing instruments, by the legislative positions of *U*. *T* and *V* are affiliated because *T* may cause or prevent action on legislative issues by *U*, and *V* is bound by *U*'s action. If *U* were the controlling organization, *T* and *V* would be affiliated as two organizations controlled by the same organization.

Example (7). Organization *A* is an organization described in section 501(c)(4). It is affiliated, as the controlling organization, with organizations *K* and *L*, both of which are described in 501(c)(3) and are eligible to elect under 501(h). If *K* elects under section 501(h), *K* and *L* are an affiliated group of organizations.

Example (8). *G, H, I,* and *J* are eligible organizations. *G, H,* and *I* have elected the expenditure test under section 501(h). The governing board of *J* has nine members. Under the governing instruments of *J*, organizations *G, H,* and *I* each designate three members of the governing board of *J*. Also under the governing instruments of *J*, action on legislative issues requires the approval of any seven board members. Because the three representatives of *G* may prevent action on legislative issues, *J* is affiliated with *G*. Similarly, *J* is affiliated with each of *H* and *I*. However, under none of the rules of affiliation is *G* affiliated with *H*, or *H* with *I*, or *I* with *G*. Therefore *J* is a member of one affiliated group comprising *G* and *J*, of another group comprising *H* and *J*, and of a third group comprising *I* and *J*.

Example (9). Organizations *C, D,* and *E* have been affiliated for many years and have all elected the expenditure test. Each has a taxable year ending July 31. For every day of the year ending July 31, 1982, they were eligible organizations, electing member organizations, and affiliated with each other. On no day of that year were they affiliated with any other eligible organization having a different taxable year. Therefore, the year ending July 31, 1982, is the taxable year of the affiliated group comprising *C, D* and *E*.

§ 56.4911–8 Excess lobbying expenditures of affiliated group.

(a) *Application.* This section provides rules concerning the exempt purpose expenditures, lobbying expenditures, and grass roots expenditures of an affiliated group of organizations, and the application of the excise tax imposed by section 4911(a) on the excess lobbying expenditures of the group.

(b) *Affiliated group treated as one organization.* Under section 4911(f), an affiliated group of organizations is treated as a single organization for purposes of the tax imposed by section 4911(a). For any taxable year of the affiliated group, the group's lobbying expenditures, grass roots expenditures, and exempt purpose expenditures are equal to the sum of the lobbying expenditures, grass roots expenditures, and exempt purpose expenditures, respectively, paid or incurred by each member during the taxable year of the affiliated group. The lobbying and grass roots nontaxable amounts for the affiliated group for a taxable year are determined under section 4911(c) (2) and (4) and § 56.4911–1(c) and are based on the sum of the exempt purpose expenditures described in the preceding sentence. The lobbying and grass roots ceiling amounts for the affiliated group for a taxable year are calculated under § 1.501(h)–3(c) (3) and (6) based upon the nontaxable amounts determined pursuant to the preceding sentence.

(c) *Tax imposed on excess lobbying expenditures of affiliated group.* The excise tax under section 4911(a) is imposed for a taxable year of an affiliated group if the group has excess lobbying expenditures. For any taxable year of an affiliated group, the group's excess lobbying expenditures are the greater of—

(1) The amount by which the group's lobbying expenditures exceed the group's lobbying nontaxable amount, or

(2) The amount by which the group's grass roots expenditures exceed the group's grass roots nontaxable amount.

(d) *Liability for tax*—(1) *Electing organizations.* As provided in this paragraph (d), an electing member organization is liable for all or a portion of the excise tax imposed by section 4911(a) on the excess lobbying expenditures of an affiliated group of organizations. An organization that is liable under this paragraph (d) is not liable for any excise tax under section 4911 based on its own excess lobbying

expenditures. A member of the affiliated group that is not an electing member organization is not liable for any portion of the excise tax that is imposed with respect to the affiliated group.

(2) *Tax based on excess lobbying expenditures.* If the excise tax imposed by section 4911(a) on the excess lobbying expenditures of an affiliated group of organizations is based upon the amount described in paragraph (c)(1) of this section, and at least one electing member has made lobbying expenditures, each electing member organization is liable for a portion of the tax equal to the amount of the tax multiplied by a fraction, the numerator of which is the electing member organization's lobbying expenditures paid or incurred during the taxable year of the affiliated group, and the denominator of which is the sum of the lobbying expenditures of all electing member organizations in the group paid or incurred during the taxable year of the affiliated group.

(3) *Tax based on excess grass roots expenditures.* If the excise tax imposed by section 4911(a) on the excess lobbying expenditures of an affiliated group of organizations is based upon the amount described in paragraph (c)(2) of this section, and at least one electing member has made grass roots expenditures, each electing member organization is liable for a portion of the tax equal to the amount of the tax multiplied by the fraction described in paragraph (d)(2) of this section, except that "grass roots expenditures" is substituted for "lobbying expenditures."

(4) *Tax based on exempt purpose expenditures.* If the excise tax imposed by section 4911(a) on the excess lobbying expenditures of an affiliated group of organizations is based upon the amount described in paragraph (c)(2) of this section, and if paragraphs (d)(2) and (d)(3) of this section do not apply because no electing organization has made lobbying or grass roots expenditures, respectively, each electing member organization is liable for a portion of the tax equal to the amount of tax multiplied by a fraction the numerator of which is the electing member organization's exempt purpose expenditures and the denominator of which is the exempt purpose expenditures of all the electing member organizations in the affiliated group.

(5) *Taxable year for which liable.* An electing member organization that is liable for all or a portion of the excise tax imposed by section 4911(a) on the excess lobbying expenditures of an affiliated group of organizations is liable for the tax as if the tax were imposed for its taxable year with which or within which ends the taxable year of the affiliated group.

(6) *Organization a member of more than one affiliated group.* If, under this paragraph (d), an organization is liable for its taxable year for two or more excise taxes imposed by section 4911(a) on the excess lobbying expenditures of two or more affiliated groups, then the organization is liable only for the greater of the two or more taxes.

(e) *Former member organization.* An electing member organization that ceases to be a member of an affiliated group of organizations, the taxable year of which is different from its own, must thereafter determine its liability under § 56.4911–1 for the excise tax imposed by section 4911(a) as if its taxable year were the taxable year of the affiliated group of which it was formerly a member. An organization to which this paragraph (e) applies that is liable for the excise tax imposed by section 4911(a) is liable for the tax as if the tax were imposed for its taxable year within which ends the taxable year of the affiliated group of which it was formerly a member. The Commissioner may, at the Commissioner's discretion, permit an organization to disregard the rules of this paragraph (e) and to determine any liability under section 4911(a) based upon its own taxable year.

§ 56.4911–9 Application of section 501(h) to affiliated groups of organizations.

(a) *Scope.* This section provides rules concerning the application of the limitations of section 501(h) to members of an affiliated group of organizations (as defined in § 56.4911–7(e)(1)).

(b) *Determination required.* For each taxable year of an affiliated group of organizations, the calculations described in § 1.501(h)–3(b)(1) (i) and (ii) must be made, based on the expenditures of the group. If, for a taxable year of an affiliated group, it is determined that the sum of the affiliated group's lobbying or grass roots expenditures for the group's base years exceeds 150 percent of the sum of the group's corresponding nontaxable amounts for the base years, then under section 501(h), each member organization that is an electing member organization (as defined in § 56.4911–7(e)(4)) at any time in the taxable year of the affiliated group shall be denied tax exemption beginning with its first taxable year beginning after the end of such taxable year of the affiliated group. Thereafter, exemption shall be denied unless (pursuant to § 1.501(h)–3(d)) the organization reapplies and is recognized as exempt as an organization described in section 501(c)(3). For purposes of this section, the term "base years" generally means the taxable year of the affiliated group for which a determination is made and the group's three preceding taxable years. Base years, however, do not include any year preceding the first year in which at least one member of the group was treated as described in section 501(c)(3).

(c) *Member organizations that are not electing organizations.* An organization that is a member of an affiliated group of organizations but that is not an electing member organization remains subject to the "substantial part test" described in section 501(c)(3) with respect to its activities involving attempts to influence legislation.

(d) *Filing of information relating to affiliated group of organizations*—(1) *Scope.* The filing requirements described in this paragraph (d) apply to each member of an affiliated group of organizations for the taxable year of the member with which, or within which, ends the taxable year of the affiliated group.

(2) *In general.* Each member of an affiliated group of organizations shall provide to every other member of the group, before the first day of the second month following the close of the affiliated group's taxable year, its name, identification number, and the information required under § 1.6033–2(a)(2)(ii)(*k*) for its expenditures during the group's taxable year and for prior taxable years of the group that are base years under paragraph (b). For groups electing under § 56.4911–7(e)(5) to have each member file information with respect to the group based on its taxable year, each member shall provide the information required by the preceding sentence by treating each taxable year of any member of the group as a taxable year for the group.

(3) *Additional information required.* In addition to the information required by § 1.6033–2(a)(2)(ii)(*k*), each member of an affiliated group of organizations must provide on its annual return the group's taxable year and, if the election under § 56.4911–7(e)(5) is made, the name, identification number, and taxable year identifying the return with which its consent to the election was filed.

(4) *Information required of electing member organization.* In addition to the information required by § 1.6033–2(a)(2)(ii)(*k*) and paragraph (d)(3) of this section, each electing member organization (as defined in § 56.4911–7(e)(4)) must provide on its annual return—

(i) The name and identification number of each member of the group, and

(ii) The appropriate calculation described in § 56.4911–8(d), if the organization is an electing member organization liable for all or any portion of the excise tax imposed by section 4911(a).

(e) *Example.* The provisions of this section may be illustrated by the following example:

Example. (1) *M, N,* and *O* are affiliated organizations under § 56.4911–7(a). *M*'s taxable year ends November 30, *N*'s, January 31, and *O*'s, June 30. On June 20, 1979, *O* files Form 5768 to elect to be governed by the expenditure test. *M* files Form 5768 in December of 1979. Neither *M* nor *O* revokes the election, and no organization makes the election provided for in § 56.4911–7(e)(5). *M, N,* and *O* constitute an affiliated group of organizations, the first taxable year of which is the calendar year 1979.

(2) Because the organizations did not elect under § 56.4911–7(e)(5) to use their own taxable years as the group's taxable years, the expenditures of the affiliated group for its first taxable year are the expenditures made by *M, N,* and *O* during calendar year 1979, and are reported by *M, N* and *O* on their returns for their taxable years within which falls December 31, 1979. *M* reports the expenditures of the affiliated group for 1979 on its return for its taxable year ending November 30, 1980; and *O*, on its return for its taxable year ending June 30, 1980. *N* is not an electing member (as defined in § 56.4911–7(e)(4)). Accordingly, under paragraph (d)(3)(i) of this section, it reports the name and identification number of each member of the group.

(3) The following tables summarize the expenditures by the affiliated group for the calendar years indicated. None of the group's lobbying expenditures for its taxable years 1979 through 1982 were grass roots expenditures.

TABLE I.—GROUP'S EXPENDITURES

Year	Exempt purpose expenditures (EPE)	Calculation	Lobbying nontaxable amount (LNTA)	Lobbying expenditures (LE)
1979	$400,000	(20% × $400,000 =)	$80,000	$100,000
1980	300,000	(20% × $300,000 =)	60,000	100,000
1981	600,000	(20% × $500,000 + 15% × $100,000 =)	115,000	120,000
1982	500,000	(20% × $500,000 =)	100,000	220,000
Totals:	1,800,000		355,000	540,000

TABLE II.—EXPENDITURES OF M AND O

	Exempt purpose expenditures		Lobbying nontaxable amount		Lobbying expenditures		M+O
	M	O	M	O	M	O	
1979	$125,000	$100,000	$25,000	$20,000	$60,000	$20,000	$80,000
1980	100,000	50,000	20,000	10,000	40,000	40,000	80,000
1981	250,000	100,000	50,000	20,000	60,000	40,000	100,000
1982	200,000	100,000	40,000	20,000	160,000	40,000	200,000

(4) For the affiliated group's taxable years 1979, 1980, 1981, and 1982, the group has excess lobbying expenditures. Under section 4911(f)(1)(B) and § 56.4911–8(d), *M* and *O*, as electing member organizations, are liable for a portion of the 25 percent excise tax imposed on the group's excess lobbying expenditures, based on their respective shares of the lobbying expenditures of all electing member organizations. For 1979, the excess lobbying expenditures are $20,000 ($100,000 − $80,000). The tax is 25% of $20,000 or $5,000; *M* must pay $3,750 [($60,000/$80,000) × $5,000 = $3,750], and *O* must pay $1,250 [($20,000/$80,000) × $5,000 = $1,250]. For 1980, the tax is $10,000 and each must pay $5,000. For 1981, the tax is $1,250 *M* must pay $750 and *O* must pay $500. For 1982, the tax is $30,000. *M* must pay $24,000 and *O* must pay $6,000. *M* and *O* are not liable for any separate § 4911 excise tax that otherwise would have been imposed on their separate excess lobbying expenditures.

(5) Under § 56.4911–9(b), the group must make the calculation described in § 1.501(h)–3(b)(1) for each of the group's taxable years 1979 through 1982. The following illustrates only the required calculation for the group's taxable year 1982. For its taxable year 1982, the group must determine whether it normally has made lobbying expenditures in excess of its lobbying ceiling amount. The determination takes into account the group's expenditures in base years 1979 through 1982. The sum of the group's lobbying expenditures for the base years ($540,000) exceeds 150% of the sum of the group's lobbying nontaxable amounts for the base years (150% × $355,000 = $532,500). Therefore, for its taxable year 1982, the group normally has made lobbying expenditures in excess of its lobbying ceiling amount. Under section 501(h) and § 56.4911–9(b), *M* is not exempt from tax under section 501(a) as an organization described in section 501(c)(3) for its taxable year beginning December 1, 1983, and *O* is not exempt for its year beginning July 1, 1983. Whether *N*'s lobbying expenditures disqualify it for tax exemption at any time after January 1, 1979, is determined under the substantial part test of section 501(c)(3).

(f) *Cross reference.* For other provisions relating to members of an affiliated group of organizations, see §§ 56.4911–3(d)(2), 56.4911–4(c)(2), 56.4911–4(e), and 56.4911–5(f)(3).

§ 56.4911–10 Members of a limited affiliated group of organizations.

(a) *Scope.* This section provides additional rules for members of a limited affiliated group of organizations, as defined in paragraph (b) of this section (relating generally to organizations that are affiliated solely by reason of provisions of their governing instruments that extend control solely with respect to national legislation). Except as otherwise provided in this section, §§ 56.4911–8 and 56.4911–9 do not apply to members of a limited affiliated group. Thus, as modified by this section, the regulations under sections 501(h) and 4911 apply to electing members of a limited affiliated group individually. For example, §§ 56.4911–2(b), 56.4911–2(c), and 56.4911–4 which, by their terms, include amounts described in paragraph (d) of this section, are used in applying sections 501(h) and 4911 to controlling member organizations (within the meaning of paragraph (c) of this section). Except as otherwise provided in this section, members of a limited affiliated group that are not electing organizations are subject to the substantial part test.

(b) *Members of limited affiliated group.* For purposes of section 4911, a limited affiliated group consists of two or more organizations that meet the following requirements:

(1) Each organization is a member of an affiliated group of organizations as defined in § 56.4911–7(e);

(2) No two members of the affiliated group described in paragraph (b)(1) of this section are affiliated by reason of interlocking governing boards under § 56.4911–7(b); and

(3) No member of the affiliated group described in paragraph (b)(1) of this section is, under its governing instrument, bound by decisions of one or more of the other such members on legislative issues other than national legislative issues.

Each organization in a group of organizations that satisfies the requirements of the preceding sentence is a member of the limited affiliated group.

(c) *Controlling and controlled organizations.* For purposes of this section, a member of a limited affiliated group is a controlling member organization if it controls one or more of the other members of the limited affiliated group, and a member of a limited affiliated group is a controlled

member organization if it is controlled by one or more of the other members of the limited affiliated group. For purposes of the preceding sentence, whether an organization controls a second organization shall be determined by whether the second organization is bound, under its governing instruments, directly or indirectly, by actions taken by the first organization on national legislative issues.

(d) *Expenditures of controlling organization*—

(1) *Scope.* This paragraph (d) applies to a controlling member organization that has the expenditure test election in effect for its taxable year. This paragraph (d) applies whether or not the organization is also a controlled member organization. In determining a controlling member organization's expenditures, no expenditure shall be counted twice.

(2) *Expenditures for direct lobbying.* A controlling member organization for which the expenditure test election is in effect shall include in its direct lobbying expenditures for its taxable year the direct lobbying expenditures (as defined in § 56.4911–2(b)) paid or incurred with respect to national legislative issues during such year by each organization that is a member of the limited affiliated group and is controlled (within the meaning of paragraph (c) of this section) by such controlling member organization.

(3) *Grass roots expenditures.* A controlling member organization for which the expenditure test election is in effect shall include in its grass roots expenditures for its taxable year the grass roots expenditures (as defined in § 56.4911–2(c)) paid or incurred with respect to national legislative issues during such year by each organization that is a member of the limited affiliated group and is controlled (within the meaning of paragraph (c) of this section) by such controlling member organization.

(4) *Exempt purpose expenditures.* The exempt purpose expenditures of a controlling member organization do not include the exempt purpose expenditures (other than lobbying expenditures described in paragraphs (d)(2) and (d)(3) of this section), of any organization that is a controlled member organization with respect to it.

(e) *Expenditures of controlled member.* A controlled member organization that is an electing organization but that does not control (within the meaning of paragraph (c) of this section) any organization in the limited affiliated group shall apply sections 501(h) and 4911 and the regulations thereunder without regard to the expenditures of any other member of the limited affiliated group.

(f) *Reports of members of limited affiliated groups*—(1) *Controlling member organization's additional information on annual return.* In addition to the information required by $1.6033–2(a)(2)(ii)(k), each controlling member organization for which the expenditure test election is in effect must provide on its annual return the name and identification number of each member of the limited affiliated group.

(2) *Reports of controlling members to other members.* Each controlling member organization for which an expenditure test election is in effect must notify each member that it controls of its taxable year in order for the controlled organization to prepare the report required by paragraph (f)(3) of this section. Such notification must be made before the beginning of the second month after the close of each taxable year of the controlling member for which the election is in effect.

(3) *Reports of controlled member organization.* Every controlled member organization (whether or not the expenditure test election is in effect with respect to it) shall provide to each member of the limited affiliated group that controls it, before the first day of the second month following the close of the taxable year of each such controlling organization, its name, identification number, and the lobbying expenditures and grass roots expenditures on national legislative issues incurred by the controlled member organization.

(g) *National legislative issues.* The term "national legislative issue" means legislation, limited to action by the Congress of the United States or by the public in any national procedure. If an issue is both national and local, it is characterized as a national legislative issue if the contemplated legislation is Congressional legislation.

(h) *Examples.* The provisions of this section are illustrated by the following examples:

Example (1). State *X* has an income tax law that uses definitions contained in the Internal Revenue Code as it may be amended from time to time. Legislation to change a definition in the Internal Revenue Code is pending in Congress. This is a national legislative issue even though Congressional action may affect state law.

Example (2). Organization *M* takes a position favoring approval by Congress of a proposed amendment to the United States Constitution. This is a national legislative issue. After approval by Congress and submission to the states for ratification, the proposed amendment ceases to be a national legislative issue.

Example (3). *N*, *O*, and *P* are organizations described in section 501(c)(3) that do not have interlocking governing boards, within the meaning of § 56.4911–7(b). *N* has elected the expenditure test under section 501(h). By virtue of the governing instruments of *O* and *P*, any decision made by *N* on national legislative issues (such as issues concerning action on acts, bills, resolutions, or similar items by Congress) binds both *O* and *P*. Under their governing instruments, *O* and *P* are not bound on any other issues. Therefore, *N*, *O*, and *P* constitute a limited affiliated group. If *P* sends a series of letters and pamphlets to members of Congress in support of bill *V*, their cost will be included in *N*'s and *P*'s expenditures for direct lobbying and in *N*'s and *P*'s exempt purposes expenditures, but will not be included in *O*'s lobbying expenditures. If N hires a lobbyist to solicit support for bill V, the cost of hiring the lobbyist will be includable only in *N*'s lobbying expenditures. Any lobbying expenditures incurred by either *O* or *P* on any issue that is not a national legislative issue will not be included in *N*'s lobbying expenditures.

Example (4). *Y* is an electing organization and a member of a limited affiliated group of organizations. *Y* controls organizations *A*, *B*, and *C* with respect to national legislative issues but is not controlled by any other organization. *Y*'s taxable year is the calendar year. During 1982, A dissolves on March 15th and *D*, also controlled by *Y* with respect to national legislative issues, is established on May 1st. For 1982 the limited affiliated group comprises *Y*, *A*, *B*, *C*, and *D*.

Example (5). *P*, *Q*, *R*, and *S* are electing organizations. The governing instruments of *Q* require it to adopt the positions on national legislative issues adopted by *P*. *R* is similarly bound by *Q*'s positions. *R* and *S* have interlocking governing boards, within the meaning of section 56.4911–7(b), but *S*'s governing instruments do not require it to adopt the position of any other organization on any legislative issues. Under § 56.4911–7(e)(1), *P*, *Q*, *R*, and *S* are members of an affiliated group. Applying paragraph (b) of this section, it is determined that (1) *P*, *Q*, *R* and *S* are members of an affiliated group; and (2) *R* and *S* are affiliated by reason of interlocking governing boards. Accordingly, *P*, *Q*, *R* and *S* are not a limited affiliated group. Similarly, *P*, *Q*, and *R* do not constitute a limited affiliated group because they are members of an affiliated group comprising *P*, *Q*, *R*, and *S*, two of whose members, *R* and *S*, are affiliated by reason of interlocking governing boards.

Example 6. *T*, *U*, *V*, and *W* are electing organizations. The governing instruments of *U* and *V* require them to adopt the positions on national legislative issues adopted by *T*, but do not require them to adopt the positions of any organization on any other legislative issues. The governing documents of *W* require it to adopt the positions of *V* on all legislative issues. Applying paragraph (b) of this section, it is determined that, (1) *T*, *U*, *V*, and *W* are all members of an affiliated group; (2) no two of *T*, *U*, *V*, and *W* are affiliated by reason of interlocking governing boards; but (3) *W* is bound, under its governing instrument, by decisions of *V* on legislative issues that are not national legislative issues.

Accordingly *T, U, V,* and *W* do not constitute a limited affiliated group. Similarly, *T, U,* and *V* do not constitute a limited affiliated group. *T, U, V,* and *W* are an affiliated group under § 56.4911–7.

§ 56.6001–1 Notice or regulations requiring records, statements, and special returns.

(a) *In general.* The provisions of § 53.6001–1 shall apply to any person subject to tax under chapter 41, Subtitle D, of the Code, by treating each reference to chapter 42 in § 53.6001–1 as a reference to chapter 41.

(b) *Cross references.* See § 56.4911–6 for general information on records of lobbying expenditures. See §§ 56.4911–9(d) and 56.4911–10(f) for information that members of an affiliated group and a limited affiliated group, respectively, are to provide to other members of the group and to the Internal Revenue Service.

§ 56.6011–1 General requirement of return, statement, or list.

Every organization liable for the tax imposed by section 4911(a) shall file an annual return with respect to the tax on the form prescribed by the Internal Revenue Service for that purpose and shall include the information required by the form and its instructions.

Roscoe L. Egger, Jr.,

Commissioner of Internal Revenue.

[FR Doc. 86–29916 Filed 11–4–1986; 8:45 am]

BILLING CODE 4830–01–M

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26 CFR Part 31

[LR–12–86]

Time and Manner of Making Quarterly Payments of the Railroad Unemployment Repayment Tax

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking by cross-reference to temporary regulations.

SUMMARY: In the rules and regulations portion of this issue of the **Federal Register**, the Internal Revenue Service is issuing temporary employment tax regulations relating to the time and manner of making quarterly payments of the railroad unemployment repayment tax. The text of the temporary regulations serves as the comment document for this notice of proposed rulemaking.

DATES: Proposed Effective Date: The proposed amendments would be effective 30 days after publication in the **Federal Register** of the Treasury decision finalizing these regulations and would be applicable to remuneration paid after June 30, 1986.

Dates For Comments and Requests For a Public Hearing: Written comments and requests for a public hearing must be delivered or mailed by January 5, 1987.

ADDRESS: Send comments and requests for a public hearing to Commissioner of Internal Revenue, Attention CC:LR:T (LR–12–86) Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Gail H. Morse of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Ave., NW., Washington, DC 20224, Attention CC:LR:T (202–566–3297, not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

The temporary regulations in the rules and regulations portion of this issue of the **Federal Register** amend the Employment Tax Regulations (26 CFR Part 31) under section 6011, 6071, 6157, and 6302 of the Internal Revenue Code.

For the text of the temporary regulations see T.D. 8105 published in the Rules and Regulations portion of this issue of the **Federal Register.** The preamble to the temporary regulations explains the addition to the regulations.

Regulatory Flexibility Act and Executive Order 12291

The Commissioner of Internal Revenue has determined that this proposed rule is not a major rule as defined in Executive Order 12291 and that a Regulatory Impact Analysis is therefore not required. The Internal Revenue Service has concluded that the regulations herein will not have a significant impact on a substantial number of small entities. Accordingly, these proposed regulations do not constitute regulations subject to the Regulatory Flexibility Act (5 U.S.C. Chapter 6).

Comments and Requests For a Public Hearing

Before adopting these proposed regulations, consideration will be given to any written comments and requests for a public hearing that are submitted (preferably eight copies) to the Commissioner of Internal Revenue. All comments will be available for public inspection and copying. A public hearing will be held upon written request to the Commissioner by any person who has submitted written comments. If a public hearing is held, notice of the time and place will be published in the **Federal Register.** The collection of information requirements contained herein have been submitted to OMB for review under the Paperwork Reduction Act, and comments on them should be sent to the Office of Information and Regulatory Affairs of OMB, Attn: Desk Officer for the Internal Revenue Service, New Executive Office Building, Washington, DC 20503. The Internal Revenue Service requests persons submitting comments to OMB to also send copies of the comments to the Service.

Drafting Information

The principal author of these proposed regulations is Gail H. Morse of the Legislation and Regulations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulations both on matters of substance and style.

P. E. Coates,

Acting Commissioner of Internal Revenue.

[FR Doc. 86–24984 Filed 10–31–86; 1:29 pm]

BILLING CODE 4830–01–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 67

[CC Docket No. 80–286]

Communications Common Carrier, Telephone; Extension of Reply Comment Period

AGENCY: Federal Communications Commission.

ACTION: Order inviting comments; Extension of reply comments.

SUMMARY: In this proceeding addressing MTS and WATS market structure, the Federal-State Joint Board, in its Order Inviting Comments and Request for Data, FCC86J–1 (released May 7, 1986 and published June 10, 1986, 51 FR 21000), set out certain issues with regard to Category 6 and Category 8 Central Office Equipment and asked for comments on those issues. Four of the parties to this proceeding requested that the time for filing reply comments on these issues be extended from October 24, 1986, until November 3, 1986. They assert that because of delays in data processing, data would not be available in usable form until too late to permit adequate analysis and preparation of reply comments by October 24, 1986. The Chief, Common Carrier Bureau, extended the time for filing until October 29, 1986. He stated that, given the need to avoid delay in the resolution

of this proceeding, the full extension requested did not appear justified. He stated that the October 29, 1986, date should allow the petitioners adequate time to prepare and submit their reply comments.

DATES: Reply comments due on or before October 29, 1986.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Michael E. Wilson, or Cindy Schonhaut, Accounting and Audits Division, Federal Communications Commission, Washington, DC 20554 (202) 632–7500.

SUPPLEMENTARY INFORMATION: This is a summary of the Order in CC Docket No. 80–286, adopted by the Chief, Common Carrier Bureau, on October 23, 1986, and released on October 29, 1986. The full text of this decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, 2100 M Street, NW., Room 140, Washington, DC 20037, (202) 857–3800.

Ordering Clauses

Accordingly it is ordered, that the Request for Extension of Time filed on October 20, 1986, is granted to the extent indicated above; and

It is further ordered, that the date for filing reply comments in this proceeding is extended to October 29, 1986.

Federal Communications Commission.

Albert Halprin,

Chief, Common Carrier Bureau.

[FR Doc. 86–24948 Filed 11–4–86; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 644

Caribbean Fishery Management Council; Public Hearings

AGENCY: National Marine Fisheries Service (NFMS), NOAA, Commerce.

ACTION: Notice of public hearings and request for comments.

SUMMARY: A fishery management plan (FMP) for billfishes is being developed as a joint effort of the South Atlantic, New England, Gulf of Mexico, Mid-Atlantic, and Caribbean Fishery Management Councils. The basic objective of the FMP is to promote the conservation of these billfish throughout their range.

The Caribbean Fishery Management Council (Council) must adopt a position regarding some of the management options that are proposed in the draft FMP. To this end, the Caribbean Council has decided to hold public hearings to receive comments from constituents on the proposed options. Interested persons are invited to attend and participate.

DATES: See **"SUPPLEMENTARY INFORMATION"** for dates, time, and locations of the hearings. Public comments are invited through December 5, 1986.

ADDRESSES: See **"SUPPLEMENTARY INFORMATION"** for locations of the hearings. Written comments should be sent to the Caribbean Fishery Management Council, Suite 1108, Banco de Ponce Building, Hato Rey, Puerto Rico 00918.

FOR FURTHER INFORMATION CONTACT: Omar Munoz-Roure, Executive Director, Caribbean Fishery Management Council, 809–753–4926.

SUPPLEMENTARY INFORMATION: The hearings are scheduled as follows:

U.S. Virgin Islands

November 24, 1986, 7:00 p.m. Conference Room, Legislature Building, Christiansted, St. Croix.

November 25, 1986, 7:00 p.m. Conference Room, Legislature Building, Charlotte Amalie, St. Thomas.

Puerto Rico

December 2, 1986, 9:30 a.m. Colegio de Ingenieros y Agrimensores, Roosevelt Development, Hato Rey, Puerto Rico.

December 3, 1986, 2:00 p.m. Mayaguez Hilton Hotel, Mayaguez, Puerto Rico.

December 4, 1986, 2:00 p.m. Holiday Inn Hotel, Highway No. 2, El Tuque, Ponce, Puerto Rico.

Dated: October 30, 1986.

Morris M. Pallozzi,

Director, Office of Enforcement.

[FR Doc. 86–24965 Filed 10–31–86; 11:23 am]

BILLING CODE 3510-22-M

Notices

Federal Register
Vol. 51, No. 214
Wednesday, November 5, 1986

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

ACTION

Student Service-Learning Projects; Availability of Funds

AGENCY: ACTION.

ACTION: Notice of Availability of funds; Student Service-Learning Projects.

The Division of VISTA/Service-Learning Programs, ACTION, announces the availability of funds for fiscal year 1987 for new VISTA Service-Learning grants authorized by the Domestic Volunteer Service Act of 1973, as amended (Pub. L. 93–113, Title I, Part B, 42 U.S.C. 4974.)

Application kits and technical assistance on grant preparation are available from the ACTION State Office. Two completed application forms, with original signature, must be received in the appropriate ACTION State Office no later than 5:00 PM local standard time on February 20, 1987.

Any applications received after that date will not be considered for Fiscal Year 1987 funding.

I. Purpose

The statutory purpose of student service-learning projects is to encourage students to undertake volunteer service in their communities in such a way as to enhance the educational value of the service experience, through participation in activities which address poverty-related problems. Student volunteers must be enrolled in secondary, secondary vocational or post-secondary schools on an in-school or out-of-school basis. They serve on a part-time, non-stipended basis.

Service opportunities must result in student volunteers gaining experiences through service in poverty communities which relate to classroom, vocational, or other learning needs.

It is the intent of student service-learning projects to join community, school and youth in developing the scope and nature of volunteer experiences which serve the needs of poverty communities while securing resources by which the effort can be continued and expanded after federal support ends.

Local communities should determine what their problems are and how best to solve them. ACTION resources can be made available to assist in helping communities solve some of their problems through fostering student volunteer service. The community must generate increasing resources to enable the project to continue once ACTION grant funds are no longer provided. Technical assistance and training in project management, fund raising and recruiting will be provided by ACTION as required.

II. Grantee Eligibility and Selection Criteria

The following criteria will be employed by ACTION staff in the selection and approval of student service-learning projects:

a. The applicant must be a Federal, State, or local agency, or private non-profit organization or foundation in the United States, the District of Columbia, Virgin Islands, Puerto Rico, American Samoa, or Guam, which has the authority to accept and the capability to administer a student service-learning project grant.

b. Student volunteer activities must be poverty-related in scope and otherwise comply with the provisions of the legislative authority outlined in Part II.

C. Grant funds must be used to initiate or expand a student volunteer service-learning project which addresses the needs of the low-income community.

d. The grantee must develop and maintain community support for the student service-learning project through a planned program including public awareness and communications.

e. Community representation in the project's operation, including representatives of youth groups, school systems, educational institutions, etc., must be identified in the grant application.

f. The grant application must demonstrate that project goals and objectives are quantifiable, measurable, and show benefits to the student volunteers and to the low-income community. It must describe the expected learning outcomes which will result from the service experience. The projected number of student volunteers who will serve in the project and hours of service are to be included in project goals and objectives.

g. The grant application must demonstrate how student volunteers will be recruited and how they will receive orientation appropriate to their assignments.

h. The grantee must identify resources which will permit continuation of the service-learning project upon the conclusion of Federal funding as outlined in Part II.

i. The grantee must comply with all programmatic and fiscal aspects of the project and may not delegate or contract this responsibility to another entity. This does not refer to agreements made with volunteer placement sites as discussed in Part V. This includes compliance with applicable financial and fiscal requirements established by ACTION or other elements of the Federal government.

j. The grantee must ensure compliance with the restrictions outlined in Part VI.

III. Grant Application Procedures

A. Scope of Grant

Student service-learning project grants are awarded for up to a twelve month period. Requests for second or third year reduced funding can be sought by grantees. Maximum federal awards over a period of three years are up to $15,000 for the first year, up to $10,000 for the second, and up to $5,000 for the third. The grantee is required to contribute a local share of at least 43,000 each year. Final determination of the actual amount of grant awards rests with the ACTION Regional Director.

ACTION seeks sponsoring organizations which can demonstrate the ability to raise sufficient local support in order to achieve 100% non-ACTION funding of their student service-learning projects after Federal funding ends.

Applicants for new or renewal grants must comply with the provisions of Executive Order 12372, the "Intergovernmental Review of Federal Programs and Activities" as set forth in 45 CFR Part 1233. ACTION State Offices will provide applicant organizations with technical assistance regarding this requirement.

B. Procedures for New Grantees

Applications will be submitted to the appropriate ACTION State Office for

programmatic and technical review. ACTION Regional Offices will review all new applications recommended for funding by the State Offices and send them, along with Regional recommendations, to the Director of VISTA/Service-Learning Programs. The Director of VISTA/Service-Learning will render final decisions on new student service-learning project grant applications.

Regional Grants and Contracts Officers will issue Notices of Grant Awards upon notification from the Director of VISTA/Service-Learning Programs.

IV. Project Management

Sponsors shall manage grants awarded to them in accordance with the provisions of these guidelines and ACTION Handbook 2650.2, *Grants Management Handbook for Grantees,* which will be furnished the sponsor at the time the initial grant is awarded.

Project support provided under an ACTION grant will be furnished at the lowest possible cost consistent with the effective operation of the project. Project costs for which ACTION funds are budgeted must be justified as being essential to project operation.

A. Local Support Contributions: The student service-learning project sponsor shall be responsible for providing at least $3,000 in non-federal share contribution for each year of the grant's operation. This amount can be obtained through cash and/or allowable in-kind contributions.

Local share can include, but is not limited to, cash or in-kind contributions such as office space, office equipment, supplies, accounting services, insurance, vehicles, telephones, printing, postage, recognition, travel and personnel which directly benefit the project.

B. Reporting Requirements: Sponsors must comply with fiscal reporting requirements as outlined in ACTION Handbook 2650.2 and must maintain records in accordance with generally accepted accounting principles. Records shall be kept available for inspection at the request of ACTION and shall be preserved for at least three years following the date of submission of the final Financial Status Report for each budget period.

If any litigation, claim, or audit is started before the expiration of the 3-year period, the records shall be retained until all litigation, claims, or audit findings involving the records have been resolved.

A quarterly project progress report shall also be submitted to the ACTION State Office no later than 30 days after the end of each project quarter. The report shall include, but not be limited to, the following items:

1. A comparison of actual accomplishments with the goals and objectives established for the period.

2. The number of volunteers participating in the project during the quarter.

3. The number of volunteer hours generated during the quarter.

4. Problems, delays, or adverse conditions that have affected or will affect the attainment of project objectives.

C. Insurance: Grantees are responsible for ensuring that student volunteers, while performing their assignments, have adequate accident, personal liability, and automobile liability insurance coverage consistent with other insurance maintained by the organization, and with sound institutional and business practices.

D. Transportation:

The sponsor should structure student volunteer assignments to minimize transportation expenses and requirements.

When transportation is not provided, volunteers may be reimbursed for actual costs within the limitations prescribed by the local project and the availability of funds.

E. Project Staff: Each grantee will designate a person to serve as the Project Director. A full-time Director is desirable yet fiscal realities or project needs may dictate otherwise. A rationale for less than a full-time Project Director must be included with the project application. Supervision of the Project Director is the responsibility of the sponsor.

Student service-learning project staff are employees of the grantee organization and are subject to its personnel policies and practices.

F. Community Relations:

1. Public Awareness: A strong community relations program ensures public awareness of start-up and continuing project activities. It is essential for the successful recruiting of volunteers and for the recognition of volunteer service. The project sponsor and Project Director should inform community, city and county officials, and the media about development, growth and success of the student service-learning project.

2. Volunteer Recognition: With the participation of the sponsor, the staff, and volunteer placement sites, recognition should be given to student volunteers for service to the community. Projects can also provide recognition to local individuals and agencies or organizations for significant activities in support of project goals.

3. Community support: A viable community support system needs to be initiated to ensure project success and project continuation without Federal funds. Project support may be sought from school districts, governmental entities, religious and service groups, United Way, foundations, the business community, youth organizations, etc. One method of enlisting and maintaining community support for the project's operation is through the establishment of a project advisory council and/or working committee of the sponsor's board.

V. Student Volunteer Assignments

Student volunteers are assigned to serve low-income communities in a variety of ways. Local sponsors are expected to develop volunteer service opportunities taking into consideration the focus of the project, the age, skills, and interests of student volunteers, as well as the value of the learning experience itself.

Clear understanding concerning the responsibilities of volunteer placement sites must be reached between representatives of the grantee's project staff and the volunteer site supervisor. Agreements may be formally arranged through the utilization of a Memorandum of Understanding, a Letter of Agreement or other means.

A formal agreement between the project staff and volunteer site will greatly assist the staff and volunteers in the management of volunteers. Issues and responsibilities concerning volunteer orientation/training, volunteer transportation, recognition and reporting of service hours, are functions outlined in this agreement.

VI. Restrictions

A. Special restrictions on student service-learning project grantees:

1. Political Activities

a. Grant funds shall not be used to finance, directly or indirectly, any activity to influence the outcome of any election to public office or any voter registration activity.

b. No project shall use grant funds to provide services, employ or assign personnel or volunteers for, or take any action which would result in the identification or apparent identification of the project with:

(1) any partisan or non-partisan political activity or any other political activity associted with a candidate, or contending faction or group, in an election for public or party office;

(2) any activity to provide voters or prospective voters with transportation

to the polls or similar assistance in connection with any election; or

(3) any voter registration activity.

2. Lobbying

a. No grant funds or volunteers may be used by the sponsor in any activity for the purpose of influencing the passage or defeat of legislation or proposals by initiative petition, except as follows:

(1) In any case in which a legislative body, a committeee of a legislative body, or a member of a legislative body requests a student volunteer, a sponsor chief executive, his or her designee, or project staff to draft, review, or testify regarding measures or to make representations to such legislative body, committee, or member; or

(2) In connection with an authorization or appropriation measure directly affecting operation of the program.

Regulations found in 45 CFR Part 1226, "Prohibitions On Electoral and Lobbying Activities," apply fully hereto, and provide further details on the limitations of political and lobbying activities that apply to volunteers and sponsors. Each grantee is obliged to know, and communicate to staff and volunteers, the prohibitions included therein.

3. Special Restriction on State or Local Government Employees

If the sponsor receiving a grant from ACTION is a state or local government agency, certain restrictions contained in Chapter 15 of Title 5 of the United States Code are applicable to persons who are principally employed in activities associated with the project. The restrictions are not applicable to employees of educational or research institutions. An employee subject to these restrictions may not:

a. Use his or her official authority or influence for the purpose of interfering with or affecting the result of an election or nomination for office.

b. Directly or indirectly coerce, attempt to coerce, command, or advise a State or local officer or employee to pay, lend or contribute anything of value to a party, committee, organization, agency or person for political purposes; or

c. Be a candidate for elective office, except in a non-partisan election. "Non-partisan election" means an election at which none of the candidates is to be nominated or elected as representing a political party any of whose candidates for Presidential election received votes in the last preceding election at which Presidential electors were selected.

If a project staff member, whose salary is traceable in whole or in part to an ACTION grant, is also a State or local government employee, the staff member is covered by provisions of the Hatch Act, restricting in many instances public participation in partisan political activities. Questions about the coverage of the Hatch Act may be addressed to the Office of General Counsel, ACTION, Washington, DC. 20525.

4. *Non-discrimination:* No person with responsibility for the operation of a project shall discriminate with respect to any activity or program because of race, creed, belief, color, national origin, sex, age, handicap, or political affiliation.

5. *Religious Activities:* Volunteers and project staff funded by ACTION shall not give religious instruction, conduct worship services, or engage in any form of proselytization as part of their duties.

6. *Labor and Anti-Labor Activity:* No grant funds shall be directly or indirectly utilized to finance labor or anti-labor organization or related activity.

7. *Non-displacement of Employed Workers:* A student volunteer may not perform any service or duty which would supplant the hiring of workers who would otherwise be employed to perform similar services or duties; or result in the displacement of employed workers or impair existing contracts for service.

8. *Non-compensation for Services:* No volunteer or other person, organization, or agency shall request or receive any compensation for services of student volunteers. No volunteer site of any member or cooperating organization shall be requested or required to contribute or to solicit contribution to establish any part of a local share. This does not prevent the acceptance of cash contributions made voluntarily and without condition to the grantee for legitimate charitable purposes.

9. *Volunteer Status:* Student volunteers are not employees of the sponsoring organization or the U.S. Government while volunteers.

Following is an address list of ACTION Regional Offices, along with the addresses of ACTION State Offices under their jurisdiction:

Region I

ACTION Region Office, 441 Stuart Street, 9th Floor, Boston, MA 02116

ACTION State Office, Abraham Ribicoff Fed. Bldg., 450 Main St., Rm 524, Hartford, CT 06103

ACTION State Office, Federal Bldg., Rm 305, 76 Pearl Street, Portland, ME 04101

ACTION State Office, 441 Stuart Street, 9th Floor, Boston, MA 02116

(New Hampshire/Vermont)

ACTION State Office, Federal Post Office & Courthouse, 55 Pleasant Street, Rm 316, Concord, NH 03301

ACTION State Office, John E. Fogarty Bldg., Rm 200, 24 Weybosset Street, Providence, RI 02903

Region II

ACTION Region Office, Jacob K. Javits Fed. Bldg., 26 Federal Plaza, Suite 1611, New York, NY 10278

ACTION State Office, 402 East State St., Rm 246, Trenton, NJ 08608

(Metropolitan New York)

ACTION State Office, Jacob K. Javits Fed. Bldg, 26 Federal Plaza, Suite 1609, New York, NY 10278

(Upstate New York)

ACTION State Office, U.S. Courthouse Federal Bldg., 445 Broadway, Room 103, Albany, NY 12207

(Puerto Rico/Virgin Islands)

ACTION State Office, Frederico DeGetau Federal Ofc. Bldg., Carlos Chardon Avenue, Suite 662, Hato Rey, PR 00918

Region III

ACTION Region Office, U.S. Customs House, 2nd & Chestnut St., Rm 108, Philadelphia, PA 19106

ACTION State Office, Federal Building, Room 372–D, 600 Federal Place, Louisville, KY 40202

ACTION State Office, Federal Building, 31 Hopkins Plaza, Romm 1125, Baltimore, MD 21201

ACTION State Office, Federal Building, Room 500, 85 Marconi Blvd., Columbus, OH 43215

ACTION State Office, U.S. Customs House, Room 108, 2nd & Chestnut Streets, Philadelphia, PA 19106

(Virginia/Dist. of Columbia

ACTION State Office, 400 North 8th Street, P.O. Box 10066, Richmond, VA 23240

ACTION State Office, 603 Morris Street, 2nd Floord, Charleston, WV 25305

Region IV

ACTION Region Office, 101 Marietta St., N.W., Suite 1003, Atlanta, GA 30323

ACTION State Office, 2131 8th Avenue North, Rm 722, Birmingham, AL 35203

ACTION State Office, 930 Woodcock Road, Suite 221, Orlando, FL 32803

ACTION State Office, 75 Piedmont Ave., NE, Suite 412, Atlanta, GA 30303

ACTION State Office, Federal Building, Rm 1005–A, 100 West Capital Street, Jackson, MS 39269

ACTION State Office, Federal Bldg., P.O. Century Station, 300 Fayetteville Street Mall, Rm 131, Raleigh, NC 27601

ACTION State Office, Federal Building, Room 872, 1835 Assembly Street, Columbia, SC 29201

ACTION State Office, Federal Bldg./US Courthouse, 801 Broadway, Room 246, Nashville, TN 37203

Region V

ACTION Region Office, 10 West Jackson Blvd., 6th Floor, Chicago, IL 60604

ACTION State Office, 10 West Jackson Blvd., 6th Floor, Chicago, IL 60604

ACTION State Office, 46 East Ohio Street, Room 457, Indianapolis, IN 46204

ACTION State Office, Federal Building, Room 339, 210 Walnut, Des Moines, IA 50309

ACTION State Office, Federal Bldg., Room 652, 231 West Lafayette Blvd., Detroit, MI 48226

ACTION State Office, Old Federal Bldg., Room 126, 212 Third Avenue South, Minneapolis, MN 55401

ACTION State Office, 517 East Wisconsin Ave., Rm 601, Milwaukee, WI 53202

Region VI

ACTION Region Office, 1100 Commerce, Rm 6B11, Dallas, TX 75242

ACTION State Office, Federal Building, Room 2506, 700 West Capitol Street, Little Rock, AR 72201

ACTION State Office, Federal Building, Room 171, 444 S.E. Quincy, Topeka, KS 66603

ACTION State Office, 626 Main Street, Suite 102, Baton Rouge, LA 70801

ACTION State Office, Federal Office Building, 911 Walnut, Room 1701, Kansas City, MO 64106

ACTION State Office, Federal Building, Cathedral Place, Room 129, Santa Fe, NM 87501

ACTION State Office, 722 North Broadway, Room 101, Oklahoma City, OK 73102

ACTION State Office, 611 East Sixth Street, Suite 107, Austin, TX 78701

Region VIII (No Region VII)

ACTION Region Office, 1405 Curtis Street, Denver, CO 80202

ACTION State Office, Columbine Bldg., Room 301, 1845 Sherman Street, Denver, CO 80203

ACTION State Office, Federal Building, Room 8036, 2120 Capitol Avenue, Cheyenne, WY 82001

ACTION State Office, Federal Office Bldg., Drawer 10051, 301 South Park, Rm 192, Helena, MT 59626

ACTION State Office, Federal Bldg., Room 293, 100 Centennial Mall North, Lincoln, NE 68508

(North & South Dakota)

ACTION State Office, Federal Building, Room 213, 225 S. Pierre Street, Pierre, SD 57501

ACTION State Office, U.S. Post Office & Courthouse, 350 South Main St., Room 484, Salt Lake City, UT 84101

Region IX

ACTION Region Office, 211 Main Street, Rm 530, San Francisco, CA 94105

ACTION State Office, 522 North Central, Room 205–A, Phoenix, AZ 85004

ACTION State Office, 211 Main Street, Room 534, San Francisco, CA 94105

ACTION State Office, Federal Bldg., Room 14218, 11000 Wilshire Blvd., Los Angeles, CA 90024

(Hawaii/Guam/American Samoa)

ACTION State Office, Federal Building, P.O. Box 50024, Honolulu, HI 96850

ACTION State Office, 4600 Kietzke Lane, Suite E–141, Reno, NV 89502

Region X

ACTION Region Office, 909 First Avenue, Seattle, WA 98174

ACTION State Office, The Alaska Center, Suite 340, 1020 Main Street, Boise, ID 83702

(Alaska)

ACTION State Office, Suite 3039, Federal Office Bldg., 909 First Avenue, Seattle, WA 98174

ACTION State Office, Federal Bldg., Room 647, 511 N.W. Broadway, Portland, OR 97209

ACTION State Office, Suite 3039, Federal Office Bldg., 909 First Avenue, Seattle, WA 98174

(42 U.S.C. 4974)

Dated in Washington, D.C. on October 28, 1986.

Donna M Alvarado,

Director, ACTION.

[FR Doc. 86–24885 Filed 10–4–86; 8:45 am]

BILLING CODE 6050–28–M

DEPARTMENT OF AGRICULTURE

Forms Under Review by Office of Management and Budget

October 31, 1986.

The Department of Agriculture has submitted to OMB for review the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35) since the last list was published. This list is grouped into new proposals, revisions, extensions, or reinstatements. Each entry contains the following information:

(1) Agency proposing the information collection; (2) Title of the information collection; (3) Form number(s), if applicable; (4) How often the information is requested; (5) Who will be required or asked to report; (6) An estimate of the number of responses; (7) An estimate of the total number of hours needed to provide the information; (8) An indication of whether section 3504(h) of Pub. L. 96–511 applies; (9) Name and telephone number of the agency contact person.

Questions about the items in the listing should be directed to the agency person named at the end of each entry. Copies of the proposed forms and supporting documents may be obtained from: Department Clearance Officer, USDA, OIRM, Room 404–W Admin. Bldg., Washington, DC 20250 (202) 447–2118.

Comments on any of the items listed should be submitted directly to: Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, Attn: Desk Officer for USDA.

If you anticipate commenting on a submission but find that preparation time will prevent you from doing so promptly, you should advise the OMB Desk Officer of your intent as early as possible.

Extension

- Agricultural Marketing Service

Grain Market News Reports and Molasses Market News

LS–177, –383, –388

Monthly, Daily

Businesses or other for-profit; 2,828 responses; 471 hours; not applicable under 3504(h).

James Ray (202) 447–6231

- Office of International Cooperation and Development Automated Skills Inventory System (ASIST)

OICD–73 Qualifications Summary

Once only

Individuals or households; Businesses or other for-profit; Non-profit institutions; Small businesses or organizations; 500 responses; 500 hours; not applicable under 3504(h).

Chuck Rooney (202) 475–5234.

Jane A. Benoit,

Departmental Clearance Officer.

[FR Doc. 86–25017 Filed 11–4–86; 8:45 am]

BILLING CODE 3410–01–M

Office of the Secretary

Members of Performance Review Boards

AGENCY: U.S. Department of Agriculture.

ACTION: Notice.

SUMMARY: This document amends the list of Performance Review Board Members published October 25, 1985, 50 FR 43427 and October 18, 1985, 50 FR 42198, and gives notice of additional Performance Review Board members.

EFFECTIVE DATE: November 5, 1986.

FOR FURTHER INFORMATION CONTACT: Fran Lopes, Chief, Compensation, Employment Performance and Executive Resources Staff, Office of Personnel, U.S. Department of Agriculture, 14th Street and Independence Avenue SW., Washington, DC 20250, (202–447–6905).

The membership of the U.S. Department of Agriculture's Performance Review Boards include:

Earle J. Bedenbaugh
Louis G. Bennett
James Boillot
J. Patrick Boyle
William Buisch
John Carson
Vance Clark
Keith J. Collins
Lester Crawford
Vivian Culp-Mann
James R. Donald
George Dunlop
Martin F. Fitzpatrick
Ray Fosse
J. Robert Franks
James Frazier
Kenneth H. Gilles
Mary Nell Greenwood
Joseph Haas
Glenn Haney
Bert Hawkins
Christopher Hicks
Donald Houston
Joseph H. Howard
Harold V. Hunter
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Myron Johnsrud
Allan S. Johnson
Billy H. Jones
John P. Jordan
William E. Kibler
Terry B. Kinney
Ralph Klofenstein
Robert Leard
John E. Lee, Jr.
Sherman Lewis
Robert Long
Philip L. Mackie
Casey Mann
John Marshall
Diane McIntyre
Kirk Miller
Donald J. Novotny
John H. Ohman
Floyd Payton
John W. Peterson
R. Max Peterson
G. Wilson Scaling
Judith Segal
Carol Seymour
Gilbert E. Sindelar
Leon Snead
Patricia Stolfa
Ed Thomas
Eric P. Thor, Jr.
Randall Torgerson
Jack Van Mark
Thomas A. Von Garlem
Joan Wallace
Saul T. Wilson
Monroe Woods.

Peters C. Myers,

Chairman, Secretary's Performance Review Board.

October 30, 1986.

[FR Doc. 86–24978 Filed 11–4–86; 8:45 am]

BILLING CODE 3410–96–M

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 338]

Resolution and Order approving the Application of the Quad-City Foreign-Trade Zone, Inc., for a Foreign-Trade Zone in the Quad-City Iowa/Illinois Customs Port of Entry

Resolution and order

Pursuant to the authority granted in the Foreign -Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board has adopted the following Resolution and Order:

The Board, having considered the matter, hereby orders:

After consideration of the application of the Quad-City Foreign-Trade Zone, Inc., an Iowa non-profit corporation licensed to do business in Illinois, filed with the Foreign-Trade Zones Board (the Board) on December 23, 1985, requesting a grant of authority of establishing, operating, and maintaining a general-purpose foreign-trade zone in Davenport, Iowa, and Milan, Illinois, within the Quad-City Customs port of entry, the Board, finding that the requirements of the Foreign-Trade Zones Act, as amended, and the Board's regulations are satisifed, and that the proposal is in the public interest, approves the application.

As the proposal involves open space on which building may be constructed by parties other than the grantee, this approval includes authority to the grantee to permit the erection of such buildings, pursuant to Section 400.815 of the Board's regulations, as are necessary to carry out the zone proposal, providing that prior to its granting such permission it shall have the concurrences of the local District Director of Customs, the U.S. Army District Engineer, when appropriate, and the Board's Executive Secretary. Further, the grantee shall notify the Board's Executive Secretary for approval prior to the commencement of any manufacturing operation within the zone. The Secretary of Commerce as Chairman and Executive Officer of the Board, is hereby authorized to issue a grant of authority and appropriate Board Order.

Grant

To Establish, Operate, and Maintain a Foreign-Trade Zone in the Quad-City, Iowa/Illinois Port of Entry Area

WHEREAS, by an Act of Congress approved June 18, 1934, an Act "To provide for the establishment, operation, and maintenance of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes," as amended (19 U.S.C. 81a–81u) (the Act), the Foreign-Trade Zones Board (the Board) is authorized and empowered to grant to corporations the privilege of establishing, operating, and maintaining foreign-trade zones in or adjacent to ports of entry under the jurisdiction of the United States:

WHEREAS, the Quad-City Foreign-Trade Zone, Inc. (the Grantee), an Iowa non-profit corporation also licensed to do business in Illinois, has made application (filed December 23, 1985, Docket No. 46–85, 51 FR 774) in due and proper form to the Board, requesting the establishment, operation, and maintenance of a foreign-trade zone with sites in Davenport, Iowa, and Milan, Illinois, within the Quad-City Customs port of entry;

WHEREAS, Notice of said application has been given and published, and full oppportunity has been afforded all interest parties to be heard; and,

WHEREAS, the Board has found that the requirements of the Act and the Board's regulations (15 CFR Part 400) are satisifed;

NOW, THEREFORE, the Board hereby grants to the Grantee the privilege of establishing, operating, and maintaining a foreign-trade zone, designated in the records of the Board as Zone No. 133 at the above locations and more particualrly described on the maps and drawings accompanying the application in Exhibits IX and X, subject to the provisions, conditions, and restrictions of the Act and the regulations issued thereunder, to the same extent as though the same were fully set forth herein, and also to the following express conditions and limitations:

Activation of the foreign-trade zone shall be commenced by the Grantee within a reasonable time from the date of issuance of the grant, and prior thereto the Grantee shall obtain all necessary permits from Federal, State, and municipial authorities.

The Grantee shall allow officers and employees of the United States free and unrestricted access to and throughout the foreign-trade zone sites in the performance of their official duties.

The Grantee shall notify the Executive Secretary of the Board for approval prior to the commencement of any manufacturing operations within the zone.

The grant shall not be construed to relieve the Grantee from liability for injury or damage to the person or property of others occasioned by the construction, operation, or maintenance of said zone, and in no event shall be the United States be liable therefor.

The grant is further subject to settlement locally by the District Director of Customs and the Army District Engineer with the Grantee regarding compliance with their respective requirements for the

protection of the revenue of the United States and the installation of suitable facilites.

IN WITNESS WHEREOF, the Foreign-Trade Zones Board has caused its name to be signed and its seal to be affixed hereto by its Chairman and Executive Officer at Washington, DC, this 29th day of October 1986, pursuant to Order of the Board.

Foreign-Trade Zones Board,
Malcolm, Baldrige,
Chairman and Executive Officer.
Attest:
John J. Da Ponte, Jr.,
Executive Secretary.
[FR Doc. 86-25021 Field 11-4-86; 8:45 am]
BILLING CODE 3510-DS-M

[Docket No. 33-86]

Proposed Foreign-Trade Zone, Reading Municipal Airport, Berks County, PA; Application and Public Hearing

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Foreign-Trade Zone Corporation of Southeastern Pennsylvania (FTZCSP), a Pennsylvanian non-profit corporation, requesting authority to establish a general-purpose foreign-trade zone in Berks County, Pennsylvania, adjacent to the Philadelphia Customs port of entry. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a-81u), and the regulations of the Board (15 CFR Part 400). It was formally filed on October 20, 1986. The applicant is authorized to make this proposal under Chapter 31, Title 66 of the Pennsylvania Consolidated Statutes Annotated.

The proposed foreign-trade zone would cover the industrial park areas (200 acres) of the 865-acre Reading Municipal Airport in Berks County. A 10,000 square foot warehouse is available for inital zone activity. FTZCSP will select an operator for multi-user warehousing operations.

The application contains evidence of the need for zone services in the Reading area. Several firms have expressed an interest in using the zone for storage/manipulation of chemicals, tubular goods, fasteners, recreational goods, electronic products, mushrooms and apparel. No manufacturing approvals are being sought at this time. Such requests would be made on a case-by-case basis.

In accordance with the Board's regulations, an examiners committee has been appointed to investigate the application and report to the Board. The committee consists of: Dennis Puccinelli (Chairman), the Foreign-Trade Zones Staff, U.S. Department of Commerce, Washington, DC 20230; Edward A. Goggin, Assistant Regional Commissioner, U.S. Customs Service, Northeast Region, 100 Summer St., Boston, MA 02110; and Lt. Colonel Ralph V. Locurcio, District Engineer, U.S. Army Engineer District Philadelphia, 2nd and Chestnut Sts., Philadephia, PA 19106.

As part of its investigation, the examiners committee will hold a public hearing on December 4, 1986, beginning at 9:00 a.m., in the Board Room of the Berks County Chamber of Commerce Offices, 645 Penn St., Reading, Pennsylvania.

Interested parties are invited to present their views at the hearing. Persons wishing to testify should notify the Board's Executive Secretary in writing at the address below or by phone (202/377-2862) by November 25. Instead of an oral presentation, written statements may be submitted in accordance with the Board's regulations to the examiners committee, care of the Executive Secretary, at any time from the date of this notice through January 12, 1987.

A copy of the application and accompanying exhibits will be available during this time for public inspection at each of the following locations:

Berks County Chamber of Commerce Offices, 645 Penn Street, Reading, PA 19601

Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, 14th and Pennsylvania Ave., NW., Room 1529, Washington, DC 20230

Dated: October 30, 1986.
John J. Da Ponte, Jr.,
Executive Secretary.
[FR Doc. 86-25022 Filed 11-4-86; 8:45 am]
BILLING CODE 3510-DS-M

International Trade Administration

[A-475-017]

Pads for Woodwind Instrument Keys From Italy; Partial Revocation of Antidumping Duty Order

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice.

SUMMARY: On June 12, 1986, the United States Court of International Trade found that the Commerce Department ("Department") erred in its antidumping finding on pads for woodwind instrument keys from Italy, insofar as, for one respondent, Luciano Pisoni Fabbrica Accessori Instrumenti Musicali ("Pisoni"), it failed to make an adjustment for differences in the physical characteristics of the merchandise compared. The Court also found, in connection with the investigation of that respondent, that in an investigation involving only ten home market sales, the Department of Commerce may not reasonably find a dumping margin by using quarterly exchange rates when no dumping would result if conversions were based on rates prevailing at the time of the transactions. The Court remanded the action to the Department for action consistent with the opinion of the Court.

On July 28, 1986, the Department reported the results of its remand proceedings to the Court. As a result of these remand proceedings, the Department found that pads for woodwind instrument keys from Italy, manufactured or exported by Pisoni, are not being, nor are likely to be, sold in the United States at less than fair value. On September 15, 1986, the Court affirmed the Department's redetermination upon remand.

As a result, the Department is revoking the antidumping finding on pads for woodwind instrument keys from Italy with regard to merchandise produced or exported by Pisoni.

EFFECTIVE DATE: November 5, 1986.

FOR FURTHER INFORMATION CONTACT: Vince Kane, Office of Investigations, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 377-5414.

SUPPLEMENTARY INFORMATION

Background

On July 11, 1984, the Department published its final determination of sales at less than fair value on pads for woodwind instrument keys from Italy (49 FR 28295). Following a final affirmative injury determination by the International Trade Commission (49 FR 34313; August 29, 1984), the Department issued an antidumping duty order (49 FR 37137; September 21, 1984).

One of the respondents in the Department's investigation leading to the antidumping finding, Luciano Pisoni Fabbrica Accessori Instrumenti Musicali ("Pisoni"), filed suit in the United States Court of International Trade, challenging the Department's final determination. On July 21, 1986, the Court held that the Department's determination was not supported by substantial evidence or in accordance with law. *Luciano Pisoni Fabbrica*

Accessori Instrumenti Musicali, et al. v. *United States*, 10 CIT ——, Slip Op. 86–62 (June 12, 1986). The Court held that the Department had improperly compared different merchandise in determining the difference between United States price and home market price, and that an adjustment for differences in the physical characteristics of the merchandise was required, pursuant to 19 CFR 353.16. It also held that in an investigation involving only ten home market sales, the Department may not reasonably find a dumping margin by using quarterly exchange rates when no dumping margin would result if conversions were based on rates prevailing at the time of the transactions. The action was remanded to the Department for action consistent with the Court's opinion.

In the remand proceedings, the Department made an adjustment for differences in the physical characteristics of the merchandise compared, and it used daily exchange rates for all necessary currency conversions. As a result, the weighted-average margin for Pisoni in the remand determination was found to be 0.286 percent. Because this amount is considered to be *de minimus*, the Department's redetermination on remand was that pads for woodwind instrument keys from Italy, manufactured or exported by Pisoni, are not being, nor are likely to be, sold in the United States at less than fair value.

After opportunity for comment by plaintiffs, the Court affirmed the Department's redetermination on remand. *Luciano Pisoni Fabbrica Accessori Instrumenti Musicali, et al.* v. *United States*, 11 CIT ——, Slip Op. 86–92 (September 15, 1986).

Partial Revocation of Antidumping Duty Order

As a result of the redetermination on remand, the Department revokes the antidumping duty order on pads for woodwind instrument keys from Italy, manufactured or exported by Pisoni. The Department will instruct the United States Customs Service to proceed with liquidation of this merchandise without regard to antidumping duties, and to refund all cash deposits and release all securities posted to cover estimated antidumping duties.

Joseph A. Spetrini,

Acting Deputy Assistant Secretary for Import Administration.

[FR Doc. 86–25023 Filed 11–4–86; 8:45 am]

BILLING CODE 3510-DS-M

[C-351-609]

Initiation of Countervailing Duty Investigation; Certain Forged Steel Crankshafts From Brazil

AGENCY: Import Administration, International Trade Administration.

ACTION: Notice.

SUMMARY: On the basis of a petition filed in proper form with the U.S. Department of Commerce, we are initiating a countervailing duty investigation to determine whether manufacturers, producers, or exporters in Brazil of certain forged steel crankshafts, as described in the "Scope of Investigation" section of this notice, receive benefits which constitute subsidies within the meaning of the countervailing duty law. We are notifying the U.S. International Trade Commission (ITC) of this action, so that it may determine whether imports of the subject merchandise from Brazil materially injure, or threaten material injury to, a United States industry. If this investigation proceeds normally, the ITC will make its preliminary determination on or before November 24, and we will make our preliminary determination on or before January 2, 1987.

EFFECTIVE DATE: November 5, 1986.

FOR FURTHER INFORMATION CONTACT: Thomas Bombelles, Bradford Ward, or Barbara Tillman, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: 202/377–3174, 202/377–2239, or 202/377–2438.

SUPPLEMENTARY INFORMATION:

The Petition

On October 9, 1986, we received a petition in proper form filed by the Wyman-Gordon Co., a domestic producer of certain forged steel crankshafts. In compliance with the filing requirements of § 355.26 of the Commerce Regulations (19 CFR 355.26), the petition alleges that manufacturers, producers, or exporters in Brazil of certain forged steel crankshafts receive subsidies within the meaning of section 701 of the Tariff Act of 1930, as amended (the Act). In addition, the petition alleges that such imports materially injure, or threaten material injury to, a United States industry producing a like product. Since Brazil is a "country under the Agreement" within the meaning of section 701(b) of the Act, the ITC is required to determine whether imports of the subject merchandise from Brazil materially injure, or threaten material injury to, a United States industry.

Initiation of Investigation

Under section 702(c) of the Act, we must determine, within 20 days after a petition is filed, whether the petition sets forth the allegations necessary for the imposition of countervailing duties, and whether it contains information reasonably available to the petitioner supporting the allegations. We have examined the petition on certain forged steel crankshafts from Brazil and have found that it meets the requirements. Therefore, we are initiating a countervailing duty investigation to determine whether manufacturers, producers, or exporters in Brazil of certain forged steel crankshafts as described in the "Scope of Investigation" section of this notice receive benefits which constitute subsidies. If our investigation proceeds normally, we will make our preliminary determination on or before January 2, 1987.

Scope of Investigation

The products covered by this investigation are forged carbon or alloy steel crankshafts with a shipping weight between 40 and 750 pounds, whether machined or unmachined. These products are currently classified under items 660.6713, 660.6727, 660.6747, 660.7113, 660.7127, and 660.7147 of the *Tariff Schedules of the United States Annotated* (TSUSA). Neither cast crankshafts nor forged crankshafts with shipping weights of less than 40 pounds or greater than 750 pounds are subject to this investigation.

Allegations of Subsidies

The petition lists a number of practices by the Government of Brazil which allegedly confer subsidies to manufacturers, producers, or exporters in Brazil of certain forged steel crankshafts. We are initiating an investigation on the following programs:

- Working Capital Financing for Exporters.
- Preferential Export Financing for Trading Companies.
- Export Financing Under the CIC-CREGE 14–11 Circular.
- Financing for Storage of Exports.
- PROEX Export Financing.
- Resolution 68 (FINEX) Financing.
- Resolution 509 (FINEX) Financing.
- BEFIEX.
- Income Tax Exemptions for Export Earnings.

- CIEX.
- Exemption of IPI Tax and Customs Duties on Imported Equipment.
- Accelerated Depreciation for Brazilian-made Capital Equipment.
- FINEP/ADTEN Long-Term Loans.
- Rebate of IPI Taxes for Capital Investment.

We are not initiating an investigation on the following program:

- Banco Nacional de Desenvolvimento Economico e Social (National Bank for Economic and Social Development or BNDES) Loans.

The Department has previously investigated BNDES loans and has found that these loans are not limited to a specific enterprise or industry or group of enterprises or industries. See *Final Affirmative Countervailing Duty Determination: Certain Carbon Steel Products from Brazil* (49 FR 17988, April 26, 1984). Because petitioner has not submitted any new evidence or alleged changed circumstances with respect to BNDES loans, we are not initiating on this program.

Notification of ITC

Section 702(d) of the Act requires us to notify the ITC of this action, and to provide it with the information we used to arrive at this demonstration. We will notify the ITC and make available to it all nonprivileged and nonproprietary information in our files. We will also allow the ITC access to all privileged and proprietary information in our files, provided it confirms that it will not disclose such information, either publicly or under an administrative protective order, without the written consent of the Deputy Assistant Secretary for Import Administration.

Preliminary Determination by ITC

The ITC will determine by November 24, 1986, whether there is a reasonable indication that imports of certain forged steel crankshafts from Brazil materially injure, or threaten material injury to, a United States industry. If its determination is negative, this investigation will terminate; otherwise, it will continue according to statutory procedures.

This notice is published pursuant to section 702(c)(2) of the Act.

Gilbert B. Kaplan,

Deputy Assistant Secretary for Import Administration.

October 29, 1986.

[FR Doc. 86-25024 Filed 11-14-86; 8:45 am]

BILLING CODE 3510-DS-M

[C-351-608]

Extension of the Deadline Date for the Final Countervailing Duty Determination and Rescheduling of the Public Hearing on Paint Filters and Strainers from Brazil

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: Based upon the request of petitioner, the Louis M. Gerson Company, Inc., we are extending the deadline date for the final determination in the countervailing duty investigation of paint filters and strainers from Brazil to correspond to the date of the final determination in the antidumping duty investigation of the same product pursuant to section 705(a)(1) of the Tariff Act of 1930, as amended by section 606 of the Trade and Tariff Act of 1984 (Pub. L. 98-573). In addition, we are rescheduling the public hearing.

EFFECTIVE DATE: November 5, 1986.

FOR FURTHER INFORMATION CONTACT: Thomas Bombelles, Bradford Ward or Barbara Tillman, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 377-3174, 377-2239 or 377-2438.

SUPPLEMENTARY INFORMATION:

Case History

On July 15, 1986, we received antidumping and countervailing duty petitions filed by the Louis M. Gerson Company, Inc. against paint filters and strainers from Brazil.

In compliance with the filing requirements of § 353.36 of our regulations (19 CFR 353.36), the antidumping petition alleged that imports of paint filters and strainers from Brazil are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Tariff Act of 1930, as amended (the Act), and that these imports materially injure, or threaten material injury to, a U.S. industry.

We found that the petition contained suffficient grounds on which to initiate an antidumping duty investigation, and on August 4, 1986, we initiated such an investigation (51 FR 28737, August 11, 1986). The preliminary determination in the antidumping investigation will be made on or before December 22, 1986.

In compliance with the filing requirements of § 355.26 of our regulations (19 CFR 355.26), the countervailing duty petition alleged that manufacturers, producers, or exporters in Brazil of paint filters and strainers directly or indirectly receive benefits which constitute subsidies within the meaning of section 701 of the Act, and that these imports materially injure, or threaten material injury to, a U.S. industry.

We found that the petition contained sufficient grounds on which to initiate a countervailing duty investigation, and on August 4, 1986, we initiated such an investigation (51 FR 28739, August 11, 1986). On October 8, 1986, we issued a preliminary negative determination in the countervailing duty investigation (51 FR 36734, October 15, 1986).

On October 23, 1986, petitioner filed a request for extension of the deadline date for the final determination in the countervailing duty investigation to correspond with the date of the final determination in the antidumping investigation.

Section 705(a)(1) of the Tariff Act of 1930, as amended by section 606 of the Trade and Tariff Act of 1984, provides that when a countervailing duty investigation is "initiated simultaneously with an [antidumping] investigation . . . which involves imports of the same class or kind of merchandise from the same or other countries, the administering authority, if requested by the petitioner, shall extend the date of the final determination [in the countervailing duty investigation] to the date of the final determination" in the antidumping investigation (19 U.S.C. 1671d(a)(1)). Pursuant to this provision, we are granting an extension of the deadline date for the final determination in the countervailing duty investigation of paint filters and strainers from Brazil until not later than March 6, 1987, the current deadline for the final determination in the antidumping investigation.

In addition, due to the extension of the final determination in the countervailing duty investigation, we are rescheduling the date of the public hearing, originally set for November 7, 1986. We have received a request for a hearing which will now be held at 10:00 a.m. on Friday, February 6, 1987, at the U.S. Department of Commerce, Room 1413, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Individuals who wish to participate in the hearing must submit a request to the Deputy Assistant Secretary for Import Administration, Room B-099, at the above address within ten days of the publication of this notice.

Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants;

(3) the reason for attending; and (4) a list of the issues to be discussed. In addition, at least ten copies of pre-hearing briefs must be submitted to the Deputy Assistant Secretary by January 30, 1987. Oral presentations will be limited to issues raised in the briefs.

In accordance with 19 CFR 355.33(d) and 19 CFR 355.34, all written views will be considered if received not less than 30 days before the final determination is due, or, if a hearing is held, within ten days after the hearing transcript is available.

This notice is published pursuant to section 705(d) of the Act, as amended.

Gilbert B. Kaplan,

Deputy Assistant Secretary for Import Administration.

October 30, 1986.

[FR Doc. 86-25025 Filed 11-4-86; 8:45 am]

BILLING CODE 3510-DS-M

[C-408-006]

Sodium Gluconate From the European Communities; Final Results of Countervailing Duty Administrative Review

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice of final results of countervailing duty administrative review.

SUMMARY: On July 14, 1986, the Department of Commerce published the preliminary results of its administrative review of the agreement suspending the countervailing duty investigation on sodium gluconate from the European Communities. The review covers the period November 1, 1983 though December 31, 1984 and two programs.

We gave interested parties an opportunity to comment on the preliminary results. We received no comments. Based on our analysis, the final results of the review are the same as the preliminary results.

EFFECTIVE DATE: November 5, 1986.

FOR FURTHER INFORMATION CONTACT: Al Jemmott or Lorenza Olivas, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-2786.

SUPPLEMENTARY INFORMATION:

Background

On May 22, 1985, the Department of Commerce ("the Department") published in the **Federal Register** (50 FR 21107) the final results of its last administrative review of the agreement suspending the countervailing duty investigation on sodium gluconate from the European Communities (the EC") (46 FR 58132, November 30, 1981). On October 7, 1985, the petitioner, Pfizer Inc., requested in accordance with § 355.10 of the Commerce Regulations an administrative review of the agreement. We published the initiation of the administrative review on January 21, 1986 (51 FR 2747) and the preliminary results of review on July 14, 1986 (51 FR 25383). We have now completed the administrative review in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act").

Scope of Review

Imports covered by the review are shipments of the chemical sodium gluconate from the EC. Such merchandise is currently classified under item 437.5250 of the Tariff Schudules of the United States Annotated.

The review covers the period November 1, 1983 through December 31, 1984 and two programs: (1) Production refunds and (2) restitution payments.

The review covers two exporters, Joh. A. Benckiser GmbH of West Germany and Akzo Chemie Nederland B.V. of the Netherlands, signatories to the suspension agreement.

Final Results of Review

We gave interested parties an opportunity to comment on the preliminary results. We received no comments. Based on our analysis, the final results of the review are the same as the preliminary results. We determine that the signatories to the agreement have complied with its terms during the period of review. Therefore, the suspension agreement for sodium gluconate from the EC will remain in effect.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and § 355.10 of the Commerce Regulations (50 FR 32556, August 13, 1985).

Dated: October 30, 1986

Gilbert B. Kaplan,

Deputy Assistant Secretary, Import Administration.

[FR Doc. 86-25026 Filed 11-4-86; 8:45 am]

BILLING CODE 3510-DS-M

Rutgers University et al.; Applications for Duty-Free Entry of Scientific Instruments

Pursuant to section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89-651; 80 Stat. 897; 15 CFR Part 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with § 301.5(a)(3) and (4) of the regulations and be filed within 20 days with the Statutory Import Programs Staff, U.S. Department of Commerce, Washington, DC. 20230. Applications may be examined between 8:30 A.M. and 5:00 P.M. in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Docket Number: 86-135R. APPLICANT: Rutgers University, Procurement and Contracting, P.O. Box 1089, Piscataway, NJ 08854. Instrument: GC/Mass Spectrometer/Data System, Model 8230C. Manufacturer: Finnigan Corporation, West Germany. Original notice of this resubmitted application was published in the **Federal Resister** of March 19, 1986.

Docket Number: 86-335. Applicant: Veterans Administration Hospital, 130 W. Kingsbridge Road, Bronx, NY 10468. Instrument: Gas Chromatograph/Mass Spectrometer/Data System, Model TS-250. Manufacturer: VG Tritech, United Kingdom. Intended Use: The instrument is intended to be used for studies of hormonal function and abnormalities in human disease, especially the steroid and peptide hormones and their derivatives and metabolites. These studies will involve both identification and measurement of the amounts of these substances in body fluids and tissue extracts. All methods of introducing the sample into the ion source of mass spectrometer will be used including an interface with a gas or liquid chromatograph and direct inlet using soft ionization techniques. Application Received by Commissioner of Customs: October 7, 1986.

Docket Number: 87-003. Applicant: University of Florida, College of Medicine, Department of Anatomy & Cell Biology, Gainsville, FL 32610. Instrument: Electron Microscope, Model JEM-100CX with Accesssories. Manufacturer: JEOL, Japan. Intended Use: Ultrastructural studies of various organs of the body that will include developmental changes both normal and abnormal. Investigations will further include ultrastructure of Sertoli cells of the testis, spermatogenesis and the blood testis barrier. Experiments will be performed to define events which occur at the molecular and macromolecular level. Other experiments involve immunocytochemistry at the ultrastructural level of various cell types of the body. In addition, the instrument

will be used for demonstration purposes in order that medical students may gain a better understanding of cell structure and methods employed in learning about cell ultrastructure. Other educational uses include teaching Ph.D. candidate students the methodology of electron microscopy so that they may employ the instrument in their research. Application Received by Commissioner of Customs: October 14, 1986.

Docket Number: 87–004. Applicant: Yale University School of Medicine, 333 Cedar Street, New Haven, CT 06510. Instrument: Electron Microscope, Model CM 10 with Accessories. Manufacturer: N.V. Philips, The Netherlands. Intended Use: The instrument will be used in research programs in the fields of neuroanatomy, cell biology, dermatology and reproductive biology. Electron microscopy will be used to: (1) Localize ferritin labeled luteinizing hormone and luteinizing hormone receptors labeled with receptor antibodies by immunohistochemistry, (2) map structural and functional sites on isolated luteinizing hormone receptors with ferritin labeled receptor antibodies (3) map microvasculature and elastic fibers in human skin by serial reconstruction and immunohistochemistry, (4) examine effects of estrogen on hypothalamic cell ultrastructure in relation to age-related reproductive failure, (5) examine hypothalamic neuroendocrine connections related to the control of gonadotropin release by ultrastructural tracing methods and immunohistochemical detection of transmitters and hormones, (6) determine the origin of "LHRH-like" peptide in the ovary by immunohistochemistry, (7) examine the effect of sex steroids on developing and adult mammalian spinal motoneurons and identify neurons by immunohistochemistry that input to motoneurons labeled by intracellular injection of horseradish peroxidase and (8) examine the effect of ovarian steroids on the hypothalamus, preoptic area and uterus by assessing neuronal and membrane ultrastructure and gap junction formation (uterus). Application Received by Commissioner of Customs: October 14, 1986.

Docket Number: 87–005. Applicant: University of Colorado, Boulder, Department of Molecular, Cellular & Developmental Biology, Box 347, Boulder, CO 80309. Instrument: High Pressure Freezing Apparatus, Model #HPMO10. Manufacturer: Balzers AG, Liechtenstein. Intended Use: The instrument is intended to be used for: (a) The study of the basic organization of cells, (b) and how cell architecture is changed by disease; (c) the basic testing of the usefulness of the instrument for biological research, (d) development of application procedures and (e) testing of design modifications. In addition, the instrument will be used to train undergraduate and graduate students and postdoctoral fellows in the use of the most advanced techniques in structural cell biology. Application Received by Commissioner of Customs: October 14, 1986.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 86–25027 Filed 11–4–86; 8:45 am]

BILLING CODE 3510-DS-M

Yale University et al.; for Duty-Free Entry of Scientific Instruments

Pursuant to section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89–651; 80 Stat. 897; 15 CFR Part 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with §§ 301.5(a) (3) and (4) of the regulations and be filed within 20 days with the Statutory Import Programs Staff, U.S. Department of Commerce, Washington, DC 20230. Applications may be examined between 8:30 a.m. and 5:00 p.m. in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Docket No.: 87–001. Applicant: Yale University, A.M. Wright Nuclear Structure Laboratory, 272 Whitney Avenue, P.O. Box 6666, New Haven, CT 06511. Instrument: Magnetic Analysis System and Transport. Manufacturer: Bruker Instruments, Inc., West Germany. Intended Use: The instrument will be used for the analysis of ion beams in nuclear physics research. The ion beam analysis provided will be an important aspect for both research activities and educational activities in the training of predoctoral graduate students in the Ph.D. thesis research. Application received by Commissioner of Customs: October 14, 1986.

Docket No.: 87–002. Applicant: University of Hawaii, Manoa Campus, Department of Chemistry, 2545 The Mall, Honolulu, HI 96822. Instrument: Mass Spectrometer, Model VG 70–SE with Accessories. Manufacturer: VG Instruments Inc., United Kingdom. Intended Use: The instrument will be used in the following areas of research:

(1) Structural analysis of pharmacologically-active natural products, in particular new anticancer drugs isolated from marine organisms and cultured microalgae;

(2) Characterization of intermediates in the total synthesis of pharmacologically-active natural products;

(3) Detection and identification of drug metabolites in organ extracts;

(4) Detection and identification of biosynthetic precursors of pharmacologically-active natural products from marine organisms and cultured microalgae; and

(5) Structural studies of peptides, polysaccharides and other biological compounds with common repeating units.

The main purpose of the instrument will be to produce molecular ions and fragmentation ions for each natural product or biomolecule under study and to display the various ions in a spectrum. The instrument will also be used to train undergraduate students, graduate students and postdoctoral fellows in modern methods of organic analysis and structure determination research. Application received by Commissioner of Customs: October 14, 1986.

Docket No.: 87–006. Applicant: St. Jude Children's Research Hospital, 332 N. Lauderdale, Memphis, TN 38101. Instrument: Stopped-flow Apparatus. Manufacturer: Hi-Tech Scientific Limited, United Kingdom. Intended Use: The instrument is intended to be used for studies of enzyme and liquid fluorescene vs. time after extremely rapid mixing, and measurements of catalytic activity with time under similar conditions. Application Received by Commissioner of Customs: October 15, 1986.

Docket No.: 87–007. Applicant: Temple University School of Medicine, Pathology Department, 3401 N. Broad Street, Philadelphia, PA 19140. Instrument: Electron Microscope, Model CM 10 with Accessories. Manufacturer: N.V. Philips, The Netherlands. Intended Use: The instrument will be used for studies of biologic tissues that often have various disease processes being manifest. Some studies will involve the normal morphobiology of tissue. Experiments being conducted include:

(1) Studies of the pattern of electron dense immunologic deposits and the reaction of the renal glomerular cells to these deposits;

(2) Studies of the distribution of various hormones including retinol binding protein by immuno electron microscopy using gold labelling;

(3) Studies of the distribution of convoluted lymphocytes as obtained by light microscopic smears versus electron microscopy;

(4) Studies and comparison of two types of brain tumors that appear to have overlapping features: the Schwannoma and the meningioma;

(5) Studies of the cause of Creutzfeldt-Jakob disease.

In addition, the instrument will be used for both training and teaching of pathology residents in the postdoctoral program and for use in preparing materials for pathology students in the undergraduate medical school class. Application Received by Commissioner of Customs: October 15, 1986.

Docket No.: 87–008. Applicant: University of Utah, Purchasing Department, Room 151, Annex Building, Salt Lake City, UT 84112. Instrument: Optical Rotatory Dispersion/Circular Dichroism Spectrophotometer, Model J–20C with Accessories. Manufacturer: Jasco, Japan. Intended Use: The instrument will be used for the following research projects entitled:

(1) Conformational Properties of Cyclic Nucleotide Derivatives

(2) Chemistry of Chiral Organorhenium Complexes

(3) Conformations of Farnesyl Pyrophosphate Synthetase, the Enzyme-Substrate, and the Enzyme-Product Complex

(4) Development of New Methodologies for Organic Synthesis.

In addition, the instrument will be used for teaching an instrumental analysis course, Chemistry 570. Application Received by Commissioner of Customs: October 16, 1986.

Docket No.: 87–009. Applicant: The University of South Carolina, Geology Department, Earth Water Science Building, Columbia, SC 29208. Instrument: Electron Microprobe, Model CAMEBAX SX 50. Manufacturer: Cameca, France. Intended Use: The instrument will be used for studies of rocks, minerals, meteorites and synthetic inorganic compounds. Experiments will involve measurement of X-ray intensity emitted by samples when bombarded by focused electron beam to determine the mode of formation of rocks and meteorites through chemical analysis of constituent minerals. The instrument will also be used for educational purposes in the courses: Introduction to Microprobe Analysis and Reading and Research. Application Received by Commissioner of Customs: October 16, 1986.

Docket No. 87–010. Applicant: The University of Oklahoma, 660 Parrington Oval, Room 321, Norman, OK 73019. Instrument: Isotope Ratio Mass Spectrometer, Model Delta E. Manufacturer: Finnigan MAT, West Germany. Intended Use: The instrument is intended to be used to determine the stable carbon, nitrogen, oxygen and sulfur isotopic compositions of a variety of geologic materials, including crude oils, natural gases, source rocks, Precambrian organic-rich shales and limestones and individual organic compounds e.g. amino acids, isolated from modern and fossil shell and bones. A primary objective is to perform stable isotope measurements at the molecular level i.e. investigate the stable isotopic compositions of individual stereoisomers of organic compounds. The information obtained will contribute to the general research objectives of determining the origins, distribution and alteration of organic matter in the earth's crust. In addition, the instrument will be used for educational purposes by providing hands-on experience, instruction in Geology 5743 and Geology 6970 and instruction in graduate seminar courses in geology and geophysics. Application Received by Commissioner of Customs: October 16, 1986.

Docket No.: 87–012. Applicant: New England Medical Center Hospitals, Department of Medicine, 171 Harrison Avenue, Boston, MA 02111. Instrument: Electron Microscope, Model CM10/PC with Accessories. Manufacturer: Philips Electronic Instruments Inc., The Netherlands. Intended Use: The instrument is intended to be used for studies of tissues sections, cell suspension, cell cultures and subcellular organelles. Experiments will be conducted for in vitro detection of: enzymes, secretion products, antigenic and antigen-antibody reaction sites, physiological and pathological cellular pathways and intracellular and cell surface receptors. The objective of these investigations is more precise morphologic delineation of cellular and molecular physiological and pathological phenomena. In addition, the instrument will be used for training students at the Masters and Ph.d. level in anatomy and cellular biology courses. Application Received by Commissioner of Customs: October 20, 1986.

Docket No. 87–013. Applicant: University of Connecticut Health Center, School of Medicine, Farmington, CT 06032. Instrument: Electron Microscope, Model CM10/PC with accessories. Manufacturer: Philips Electronic Instruments, The Netherlands. Intended Use: The instrument will be used to conduct the following:

(1) Characterizatioin and localization of extracellular and cell surface associated glycosaminoglycans and proteoglycans and B-adrenergic receptors in developing salivary glands.

(2) Study of the synthesis and secretion of osteoblast extracellular matrix proteins, and their regualtion by 1,25 dihydroxy-vitamin D_3 and parathyroid hormone (PTH).

(3) Studies of mammalian gustatory system which focus on the connections of identified afferent axonal endings in the medulla.

(4) Studies of titanium alloys in dentistry.

(5) Studies of the mechanisms for the non-specific and specific antibacterial properties of SnF_2.

(6) Histologic and electon microscopic observations on the effect of experimental diabetes on periodontal tissues and periodontal disease.

Application Received by Commissioner of Customs: October 20, 1986.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 86–25028 Filed 11–4–85; 8:45 am]

BILLING CODE 3510-DS-M

National Oceanic and Atmospheric Administration

[P77 #21]

Application for Marine Mammals Permit; National Marine Fisheries Service, Northwest and Alaska Fisheries Center

Notice is hereby given that an applicant has applied in due form for a Permit to take marine mammals as authorized by the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361–1407), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 216), the Endangered Species Act of 1973 (16 U.S.C. 1531–1544), and the National Marine Fisheries Service regulations governing endangered fish and wildlife permits (50 CFR Parts 217–222).

1. Applicant: a. Name: Northwest and Alaska Fisheries Center National Marine Fisheries Service
   b. Address: 7600 Sand Point Way, NE. BIN C15700 Seattle, Washington 98115.
2. Type of Permit: Scientific Research/ Scientific Purposes
3. Name and Number of Marine Mammals: An unspecified number of specimen materials may be taken and/or imported from dead individuals of all species of pinnipeds, except walrus, and all species of cetaceans which are; (a) Directly

taken in fisheries for such animals, in countries and situations where such taking is legal; (b) killed incidental to fishing or other operations, (c) found dead floating at sea or beached, or (d) dead of natural causes

4. Location of Activity: Worldwide, principally from the open waters, coastal areas and islands of the North Pacific Ocean, Gulf of Alaska, Bering Sea, Chuckchi Sea and Beaufort Sea
5. Period of Activity: 5 Years

Concurrent with the publication of this notice in the Federal Register, the Secretary of Commerce is forwarding copies of this application to the Marine Mammal Commission and the Committee of Scientific Advisors.

Written data or views, or requests for a public hearing on this application should be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, U.S. Department of Commerce, Washington, DC 20235, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular application would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries.

Documents submitted in connection with the above application are available for review by interested persons in the following offices:

Office of Protected Species and Habitat Conservation, National Marine Fisheries Service, 1825 Connecticut Avenue, NW., Rm 805, Washington, DC; and

Director, Alaska Region, National Marine Fisheries Service, 709 West 9th Street, Federal Building, Juneau Alaska 99802;

Director, Northeast Region, National Marine Fisheries Service, 14 Elm Street, Federal Building, Gloucester, Massachusetts 01930;

Director, Northwest Region, National Marine Fisheries Service, 7600 Sand Point Way, NE. BIN C15700, Seattle Washington 98115;

Director, Southeast Region, National Marine Fisheries Service, 9450 Koger Boulevard, St. Petersburg, Florida 33702; and

Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, California 90731.

Dated: October 28, 1986.

Carmen J. Blondin,

Deputy Assistant Administrator for Fisheries Resource Management, National Marine Fisheries Service.

[FR Doc. 86-25010 Filed 11-4-86; 8:45 am]

BILLING CODE 3510-22-M

DEPARTMENT OF DEFENSE

Corps of Engineers, Department of the Army

Intent To Prepare a Draft Environmental Impact Statement (DEIS) for Proposed Development of Cedar Island in Accomack County, VA

AGENCY: U.S. Army Corps of Engineers, DOD.

ACTION: Notice of Intent to Prepare a Draft Environmental Impact Statement (DEIS).

SUMMARY:

1. **Proposed Action:** Cedar Island is a largely undeveloped barrier island off the coast of Virginia. Mr. Ben Benson, whose family had owned much of Cedar Island, has recently sold approximately 100 lots on the island for residential development. He proposes to construct a community pier at the north end of the island for use by the lot owners and for bringing building supplies to the island. The direct impacts of the community pier and the subsequent secondary and cumulative impacts of the residential development on the island will be addressed in the DEIS.

2. Alternatives: Alternatives which will be investigated include but will not be limited to different means of access to Cedar Island, different possible scenerios of development on the island, and the no action (permit denial) alternative.

3. **Scoping Process:** A public scoping meeting on this project is not anticipated at this time due to the substantial amount of information available from public meetings about island development held by the Virginia Marine Resources Commission (VMRC). Transcripts and statement copies will be obtained from VMRC to determine the significant issues identified by the Federal, State, and local agencies, individuals and organized groups during the VMRC's meetings and hearings. A public notice requesting written scoping comments will be published in the near future. Significant issues which have already been identified and which will be analyzed in the DEIS include indirect impacts of residential development on wetlands, sand dunes, beach erosion, and on the Piping Plover, a bird which nests on the island and which is listed as a threatened species under the Endangered Species Act.

4. **DEIS Availability:** It is estimated that the DEIS will be available to the public for review and comments in the fall of 1987.

ADDRESS: Questions about the proposed action and DEIS can be answered by: Mrs. Cynthia Wood, U.S. Army Corps of Engineers District, Norfolk, 803 Front Street, Norfolk, Virginia 23510-1096, (804) 441-3219—COM, 827-3219—FTS.

Dated: October 28, 1986.

Claude D. Boyd III,

Colonel, Corps of Engineers, District Engineer.

[FR Doc. 86-24945 Filed 11-4-86; 8:45 am]

BILLING CODE 3710-EN-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER87-39-000 et al.]

Arkansas Power & Light Co. et al.; Electric Rate and Corporate Regulation Filings

October 31, 1986.

Take notice that the following filings have been made with the Commission.

1. Arkansas Power & Light Co.

[Docket No. ER87-39-000]

Take notice that Arkansas Power & Light Company (AP&L) tendered for filing on October 22, 1986 a letter agreement for sale of Middle South System reserve capacity to Associated Electric Cooperative, Inc.

AP&L requests an effective date of January 1, 1987 for the letter agreement.

Comment date: November 13, 1986, in accordance with Standard Paragraph E at the end of this notice.

2. Consolidated Edison Co. of New York, Inc.

[Docket No. ER87-45-000]

Take notice that on October 24, 1986, Consolidated Edison Company of New York, Inc. ("Con Edison") tendered for filing, as a rate schedule change, an agreement to extend the term of its capacity sale to Long Island Lighting Company ("LILCO") under its Rate Schedule FERC No. 80, from October 25, 1986, the current termination date, to December 31, 1986. No other changes are made in the Rate Schedule.

Con Edison requests waiver of the notice requirements of § 35.3 of the Commission's regulations so that the Supplement can be made effective as of October 26, 1986.

Con Edison states that a copy of this filing has been served by mail upon LILCO.

Comment date: November 13, 1986, in accordance with Standard Paragraph E at the end of this notice.

3. Florida Power & Light Co.

[Docket No. ER87-36-000]

Take notice that Florida Power & Light Company (FPL), on October 20, 1986, tendered for filing: (1) A Contract for Interchange Service Between Florida Power & Light Company and the Utilities Commission, City of New Smyrna Beach, Florida ("Contract"); and (2) Cost Support Schedules C, F, and G (together with Cost Support Schedule F Supplements) which support the daily capacity charges for sales under Service Schedule B (Short-Term Firm Interchange Service) of the Contract. The Contract has been executed by both parties.

FPL respectfully requests that the proposed Contract and Cost Support Schedules C, F, and G (together with Cost Support Schedule F Supplements) be made effective January 1, 1987. According to FPL, a copy of this filing was served upon the Utilities Commission, City of New Smyrna Beach, Florida and the Florida Public Service Commission.

Comment date: November 13, 1986, in accordance with Standard Paragraph E at the end of this notice.

4. Interstate Power Co.

[Docket No. ER86-654-000]

Take notice that on October 7, 1986, Interstate Power Company tendered for filing a request that present EXHIBIT VI be deleted and a revised EXHIBIT VI will be filed if and when any charges are actually made under the provisions of the shared facilities agreement.

Comment date: November 13, 1986, in accordance with Standard Paragraph E at the end of this notice.

5. Central Vermont Public Service Corp.

[Docket No. ER86-689-000]

Take notice that Central Vermont Public Service Corporation (Central Vermont) on October 20, 1986 tendered for filing additional information relative to the Company's August 29, 1986 filing of the annual cost data as required by provisions of Article V of the Power Purchase Contracts with the following customers:

Customer	Rate schedule FERC No.
Vermont Electric Generation and Transmission Co-operative, Inc	88
Lyndonville Electric Department	92
Village of Ludlow Electric Light Department	96
Village of Johnson Water and Light Department	106
Village of Hyde Park Water and Light Department	111

The additional information is intended to more fully explain the derivation of the purchased capacity and transmission by others costs set forth on APPENDIX II, Schedule 1, Page 1 of 2 of the annual cost update. The information reconciles the purchased power data contained in the Company's FERC Form No. 1 to the purchased capacity data used in this annual update and the purchased energy included in the monthly System Power Energy Charge.

The Company respectfully requests a waiver of the 60-day notice requirement so that the System Capacity Rates may become effective on November 1, 1986 as provided for under the Contracts.

Copies of this filing were served upon the customers and the Vermont Public Service Board.

Comment date: November 13, 1986, in accordance with Standard Paragraph E at the end of this notice.

6. Mississippi Power and Light Co.

[Docket No. ER86-679-000]

Take notice that on October 14, 1986, Mississippi Power & Light Company (the Company) tendered for filing as an amendment of the Letter Agreement for Short-Term Firm Power, workpapers that provide support for the monthly demand charge included in the Letter Agreement.

Comment date: November 14, 1986, in accordance with Standard Paragraph E at the end of this notice.

7. New England Power Co.

[Docket No. ER86-170-004]

Take notice that on October 3, 1986, New England Power Company (NEP) tendered for filing a compliance report statement that NEP had acted in accordance with the Commission's interim rate order, whereby billings at the Tariff No. 3 settled rates were initiated on June 22, 1986 and billings under Tariff No. 4 commenced at settlement rates July 1, 1986. Therefore, NEP states that no amounts have been collected in excess of the settlement rate levels and no refunds to customers under Tariff Nos. 3 and 4 are required.

Comment date: November 14, 1986, in accordance with Standard Paragraph E at the end of this notice.

8. Southern Company Services, Inc.

[Docket No. ER87-26-000]

Take notice that on October 14, 1986, Southern Company Services, Inc., acting on behalf of Alabama Power Company, Georgia Power Company, Gulf Power Company and Mississippi Power Company ("Southern companies") tendered for filing Amendment No. 3 to an Interchange Contract between Southern Companies and Florida Power & Light Company.

The subject amendment to the Interchange Contract revises the terms and conditions under which Southern Companies and Florida Power & Light Company will price economy energy transactions between their respective electric systems. The amendment provides for an additional pricing mechanism which allows the parties to negotiate the price of economy energy transactions.

Comment date: November 13, 1986, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-25005 Filed 11-4-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP87-22-000 et al.]

Northwest Pipeline Corp. et al.; Natural Gas Certificate Filings

October 30, 1986.

Take notice that the followings filings have been made with the Commission.

1. Northwest Pipeline Corp.

[Docket No. CP87-22-000]

Take notice that on October 14, 1986, Northwest Pipeline Corporation (Northwest), 295 Chipeta Way, Salt Lake City, Utah 84108, filed in Docket No. CP87-22-000, a petition for an order declaring that a certain activity as proposed by Northwest is a temporary act or operation for which the issuance of a certificate under section 7(c) of the Natural Gas Act (NGA) is not requried in the public interest and is therefore exempt from the requirements of that section. It is stated that the activity for which Northwest seeks the exemption is the construction and operation of a meter station and appurtenant facilities and the transportation of up to 29,000 MMBtu of non-jurisdictional sales gas per day

(MMBtu/d) by Northwest for sale to Exxon Company U.S.A. (Exxon) for use during emergency shut-downs of Exxon's Dry Piney Dehydration Plant and during facility malfunction at Mountain Fuel Resources, Inc.'s (MFR) Dry Piney Gas Conditioning Plant, both in Sublette County, Wyoming, all as more fully set forth in the petition which is on file with the Commission and open to public inspection.

It is stated that the Dry Piney Dehydration Plant was constructed by Exxon to treat natural gas from the La Barge Anticline located in southwestern Wyoming. It is then stated that the natural gas treated in the Dry Piney Dehydration facility is transported through Exxon's facilities to the inlet of Exxon's Shute Creek Processing Plant. Northwest states that ANR Pipeline Company (ANR) then purchases the processed gas for its general system supply requirements. It is indicated that by order dated January 24, 1985, in Docket No. CP84–756–000, MFR was granted authorization to deliver natural gas to its affiliated local distribution company for ultimate delivery to Exxon for base load requirements at Exxon's Dry Piney Dehydration Plant. Northwest states that the supply source from which MFR provides base load requirements to Exxon is MFR's Dry Piney Gas Conditioning Plant. MFR has indicated to Northwest that the current production at the tailgate of its plant is approximately 8,500 MMBtu/d.

Exxon has stated to Northwest that in the event of a plant upset at the Dry Piney Dehydration Plant, its needs for instantaneous emergency gas would be approximately 29,000 MMBtu/d, an amount that is in excess of the present capacity of MFR's plant. In the event that Exxon's Dry Piney facility experienced failure, it is stated, MFR would be unable to supply a sufficient source of pipeline quality gas to provide flare assistance volumes to Exxon, thus creating a potentially hazardous situation because Exxon would be unable to flare the unprocessed gas within the plant site because the raw gas contains lethal amounts of hydrogen sulfide; thus, the limited venting of this gas could create a safety hazard for field employees. It is further stated that in the event MFR's facility failed to operate at capacity or to otherwise function properly, MFR would be unable to supply Exxon's Dry Piney facility with its entire base load requirements.

It is stated that to insure an ample supply of emergency shut-down gas to Exxon for use in flare assistance procedures and to supply base load protection, Exxon and Northwest have entered into an emergency gas sales agreement (Agreement) dated July 28, 1986, under which Northwest would provide on a firm basis up to 29,000 MMBtu/d of pipeline quality gas for use as emergency fuel gas for emergency shut-down operations at Exxon's Dry Piney Dehydration Plant. It is maintained that in the event that MFR cannot provide adequate base load volumes due to a facility malfunction, Northwest would supply a portion of Exxon's base load requriements until MFR is able to correct the facility malfunction. It is stated that the Agreement is effective for a primary term of five years and from year-to-year thereafter until terminated upon six months written notice. Northwest stated that the emergency shut-down gas would be used, in the event of a plant failure, as flare assistance gas and as purge and pack gas to restart the plant. It is stated that Exxon estimates that for each plant failure the emergency gas volumes would be required for a period of 4–5 hours for flare assistance and for a period of 24 hours maximum to purge and repack the plant. Northwest states that Exxon indicates that plant upsets would probably occur no more than twice a year. It is maintained that the emergency base load would be provided only during periods when MFR is unable to provide Exxon with 100% of its base load requirements. Inasmuch as MFR's facilities malfunctions are impossible to forecast as to length of time and frequency, Northwest states that it would provide the emergency base load requirement on an as-needed basis only. However, Northwest expects that any failure, such as a meter freeze-off could be expected to be corrected within hours of the failure. It is stated that if Exxon's emergency base load requirements were not supplied by Northwest, Exxon's plant could be forced into unnecessary and repeated plant failures, requiring Exxon to flare and purge the entire facility. Northwest states that it would deliver the subject gas to MFR for Exxon's account at the new meter station located in Sublette County, Wyoming. The new facilities are located on existing Northwest right-of-way adjacent to its 30-inch Big Piney lateral.

It is stated that for all volumes of natural gas sold to Exxon under the terms of the Agreement, Northwest would charge a rate equal to its IOS–1 rate which currently is 24.008 cents per therm as set forth on Twenty-Seventh Revised Sheet No. 10 in Northwest's FERC First Revised Volume No. One Tariff. In accordance with the approved settlement of Northwest's rate proceeding in Docket No. RP85–13–000, Northwest states it would retain all revenues received from Exxon hereunder.

Northwest states that the estimated cost of installing the meter station and appurtenant facilities would be $402,000, which would be financed from funds on hand. Northwest further states that Exxon would reimburse Northwest for the total cost of installing such facilities.

It is stated that Northwest requests the Commission to issue a declaratory order confirming that the activity described above is a temporary act or operation for which the issuance of a certificate under section 7(c) of the NGA is not required in the public interest and is therefore exempt from the requirements of that section.

Comment date: November 20, 1986, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

2. Tennessee Gas Pipeline Co., a Division of Tenneco Inc.

[Docket No. CP87–25–000]

Take notice that on October 14, 1986, Tennessee Gas Pipeline Company, a Division of Tenneco Inc. (Applicant), P.O. Box 2511, Houston, Texas 77001, filed a request pursuant to §§ 157.205 and 157.212 of the Regulations under the Natural Gas Act (18 CFR 157.205) to establish a new delivery point to its existing firm sales customer New York State Electric & Gas Corporation (NYSEG) under Applicant's blanket certificate issued in Docket No. CP82–413–000, all as more fully set forth with the Commission and open to public inspection.

Applicant states that pursuant to NYSEG's request, it has agreed to establish a new delivery point in Yates County, New York. According to Applicant, the new delivery point is necessary to enable NYSEG to render service to a new gas franchise area recently acquired by NYSEG. It is stated that all costs associated with the construction of the proposed new delivery point would be borne by NYSEG.

It is stated that the Maximum Daily Quantity to be delivered at the subject delivery point would be 1,000 dt equivalent. Applicant further states that it does not propose to increase or decrease the total daily and/or annual quantities it is authorized to deliver to NYSEG. Applicant asserts that the establishment of the proposed new delivery point would not be prohibited by Applicant's currently effective tariff and that it has sufficient capacity to accomplish the deliveries at the proposed new delivery point without detriment or disadvantage to any of Applicant's other customers.

Comment date: December 15, 1986, in accordance with Standard Paragraph G at the end of this notice.

3. Texas Eastern Transmission Corp.

[Docket No. CP87–28–000]

Take notice that on October 16, 1986, Texas Eastern Transmission Corporation (Applicant), P.O. Box 2521, Houston, Texas 77252, filed in Docket No. CP87–28–000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity for authorization to provide a firm storage delivery service for Consolidated Edison Company of New York, Inc. (Con Ed), pursuant to its Rate Schedule SS–II and to construct and operate additional pipeline facilities required to render such service, all as more fully set forth

in the application which is on file with the Commission and open to public inspection.

Applicant requests authorization to provide a firm storage delivery service for Con Ed of 23,115 dt equivalent firm daily delivery of natural gas and to construct and operate facilities at an estimated cost of $13,438,000. It is stated that the project involves the looping of 8.00 miles of 36-inch pipeline at four locations in Pennsylvania, and upgrading compression facilities by 8,600 hp at each of two locations in Pennsylvania.

Applicant states that a Precedent Agreement has been executed with Con Ed who has requested Firm Daily Withdrawal Quantities (FDWQ). It is asserted that the annual costs associated with all facilities which must be added to Applicant's system to render the firm deliveries would be borne by Con Ed by means of a Firm Demand Charge. Applicant estimates a Firm Demand Charge of $10.0350 per dt equivalent of natural gas at FDDQ per month.

Comment date: November 20, 1986, in accordance with Standard Paragraph F at the end of this notice.

4. Williston Basin Interstate Pipeline Co.

[Docket No. CP87-20-000]

Take notice that on October 14, 1986, Williston Basin Interstate Pipeline Company (Applicant), Suite 200, 304 East Rosser Avenue, Bismarck, North Dakota 58501, filed in Docket No. CP87-20-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authority to construct a sales tap and appurtenant facilities to provide for the transportation of natural gas owned by Marathon Oil Company (Marathon), under the certificate issued in Docket No. CP82-487-000, T3et. al., pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

It is stated that Applicant seeks authorization to construct a new sales tap and appurtenant facilities on its Grass Creek gathering system, located in Hot Springs County, Wyoming, to provide for the delivery of between 350 and 375 Mcf of natural gas per day owned by Marathon for field use by Marathon. Applicant proposes to transport such volumes for Marathon pursuant to its rate schedule S-2 or any superseding rate schedule. The estimated cost to construct the proposed sales tap is $8,900 and would be reimbursed in total by Marathon. Applicant avers that the installation of the sales tap would have no signficant effect on its peak day or annual requirements.

Comment date: December 15, 1986, in accordance with Standard Paragraph G at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if not motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unecessary for the applicant to appear to be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-25006 Filed 11-4-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER87-41-000]

Bangor Hydro-Electric Co. et al.; Notice of Filing of Rate Schedule

October 27, 1986.

In the matter of Bangor Hydro-Electric Co.; Central Maine Power Co.; Central Vermont Public Service Co.; Fitchburg Gas and Electric Co.; Maine Public Service Co.;

Take notice that on October 22, 1986, the above-named utilities (Sellers) tendered for filing as an initial rate schedule to become effective sixty days following such filing date an agreement between Sellers and EUA Power Corporation (EUA Power) providing for service to EUA Power on certain transmission-related facilities at the Seabrook nuclear generating project.

Sellers state that the purpose of such initial rate schedule is to provide service to EUA Power pending Commission authorization under section 203 of the Federal Power Act approving the conveyance of such transmission-related facilities to EUA Power.

Sellers state that a copy of this initial rate schedule filing was mailed to EUA Power.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before November 6 1986. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this application are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-24970 Filed 11-4-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. SA87-1-000]

Crest Resources and Exploration Corp.; Petition for Adjustment

October 30, 1986.

On October 6, 1986, Crest Resources and Exploration Corp. (Crest) filed an application with the Commission under section 502(c) of the Natural Gas Policy Act of 1978 (NGPA) for relief from its Btu refund obligation under Order Nos. 399 and 399-A.[1] Crest states that it is the operator of a gas well in Matagorda County, Texas, but does not own a working interest therein. The well was plugged and abandoned during the first part of 1983. Prior to abandonment, gas from the well was sold to Tennessee Gas Pipe Line Company.

Crest asserts that it has made diligent effort to collect the refunds owed by the 38 different owners of interests in the well, and received $2448.33, which it has paid over to Tennessee. Crest seeks a waiver of the remaining balance of funds owed, $8,859.58 plus accured interest, on grounds that it has been unable to locate some interest owners, some have died, and others are in bankruptcy. Crest also argues that since it is not an interest owner in the well, it is not responsible for paying refunds on behalf of the owners, and furthermore, that it is financially unable to make the payments.

The procedures applicable to the conduct of this adjustment proceeding are found in Subpart K of the Commission's Rules of Practice and Procedure. Any person desiring to participate in this adjustment proceeding must file a motion to intervene in accordance with the provisions of such Subpart K. All motions to intervene must be filed with in 15 days after publication of this notice in the **Federal Register.**

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-25007 Filed 11-4-86; 8:45 am]

BILLING CODE 6717-01-M

[1] Refunds Resulting from Btu Measurement Adjustments, 49 FR 37735 (Sept. 26, 1984) (Order No. 399), FERC Statutes & Regulations [Regulations Preambles 1982-1985] ¶ 30,597. In Order No. 399, the Commission established refund procedures for charges for natural gas above NGPA ceilings as a result of Btu measurements based on the "as delivered" water vapor content of the gas, rather than on a water saturated basis. In so doing, the Commission was implementing the decision in Interstate Natural Gas Association of America v. Federal Energy Regulatory Commission, 716 F.2d 1 (D.C. Cir. 1983), *cert. denied*, 465 U.S 1108 (1984). Order No. 399-A, 49 FR 46353 (Nov. 26, 1984), FERC Statutes & Regulations [Regulations Preambles 1982-1985] ¶ 30,612, recognized the Commission's authority to waive Btu refunds attributable to royalty interest payments where the operator can demonstrate its inability to collect the refunds from royalty interest owners.

[Docket Nos. RP80-55-012 and RP85-167-006]

Sea Robin Pipeline Co.; Filing

October 31, 1986.

Take notice that on *October 28, 1986*, Sea Robin Pipeline Company (Sea Robin) submitted the following proposed tariff sheets as part of its FERC Tariff:

Original Volume No. 1

Forty-Fifth Revised Sheet No. 4
Twenty-Fourth Revised Sheet No. 4-A

Original Volume No. 2

Twenty-Eighth Revised Sheet No. 127-D
Twenty-Eighth Revised Sheet No. 135-C

Sea Robin requested waivers of the Commission's regulations to permit the tariff sheets to become effective on October 1, 1986.

Sea Robin states that the filing is in compliance with the decision of the United States Court of Appeals for the District of Columbia Circuit in *Sea Robin Pipeline Company v. FERC*, 795 F.2d 182 (D.C. Cir. 1986), as contemplated in the approved settlement at Docket No. RP85-167.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211. All such motions or protests must be filed on or before *November 7, 1986*. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make any protestant a party to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of the filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-25008 filed 11-4-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP82-125-019]

Tennessee Gas Pipeline Co., a Division of Tenneco Inc., Filing

October 30, 1986.

Take notice that on October 27, 1986, Tennessee Gas Pipeline Company, a Division of Tenneco Inc., tendered for filing proposed tariff sheets to its FERC Gas Tariff First Revised Volume No. 1 and Original Volume No. 2, consisting of the following:

First Revised Volume No. 1

Second Revised Sheet No. 22
Third Revised Sheet No. 22

Original Volume No. 2

First Revised Sheet Nos. 3 through 8
Original Sheet Nos. 9 and 10
Original Sheet Nos. 1749 through 1847
Original Sheet Nos. 1848 through 5000
Original Sheet Nos. 5601 through 5631.

Tennessee states that these tariff sheets are filed to reflect new rates for Rate Schedules SST-NE and ISST-NE, to implement new rate schedules for certain long-term transportation agreements that have received authorization in various proceedings before the Commission, and to revise the Summary of Rates and Charges in Original Volume No. 2.

Any person desiring to be heard or to protest said filing should file a motion to intervene or to protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211). All such motions or protests should be filed on or before November 7, 1986. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-25009 Filed 11-04-86; 8:45 am]

BILLING CODE 6717-01-M

Conservation and Renewable Energy Office

National Energy Extension Service Advisory Board; Change in Time of Meeting

This notice is given to advise of the change in time of the meeting of the National Energy Extension Service Advisory Board on November 13 and 14, 1986, as published in the **Federal Register** on October 16, 1986 (51 FR 36846).

On November 13, the meeting will convene at 8:00 a.m. and adjourn at 1:30 p.m. On November 14, the meeting will convene at 8:00 a.m. and adjourn at 12:00 noon. The agenda topics will remain the same. The meeting will be held in the Capitol Room, East Conference Center, Omni Shoreham Hotel, 2500 Calvert Street NW., Washington, DC.

Issued at Washington, DC, on October 31, 1986.

J. Robert Franklin,

Deputy Advisory Committee Management Officer.

[FR Doc. 86-25029 Filed 11-4-86; 8:45 am]

BILLING CODE 6450-01-M

Western Area Power Administration

Salt Lake City Area Integrated Projects Proposed Power Rate

AGENCY: Western Area Power Administration, DOE.

ACTION: Notice of Proposed Power Rate—Salt Lake City Area Integrated Projects.

SUMMARY: The Western Area Power Administration (Western) is proposing to establish a rate for power and energy from the Salt Lake City Area Integrated Projects (Integrated Projects). The projects included in integration are the Collbran Project (Collbran), the Rio Grande Project (Rio Grande), and the Colorado River Storage Project (CRSP). The rate for the Integrated Projects (Integrated rate) will cover annual operating expenses and repay the Federal investment in the projects. The proposed Integrated rate for firm power is 10.25 mills per kWh. The present rate for Collbran power is 21.8 mills per kWh. The present rate for Rio Grande power is 30.85 mills per kWh with a proposed rate of 37.32 mills per kWh scheduled to begin in April 1987. The present CRSP rate is 9.92 mills per kWh. In addition, Western proposes to include a surcharge of 1 percent for each percent or major part thereof that a customer's power factor falls below 95 percent lagging or 95 percent leading. Another part of the power factor adjustment provision will provide a means for Western to recover costs it may incur because of conditions on a customer's system. The proposed new SLCA–F1 Rate Schedule will replace schedules SP–F2 and SP–FP2 for CRSP firm and peaking power services. Collbran and Rio Grande contractors will be offered contract modifications to discontinue the purchase of Collbran and Rio Grande resources in exchange for equivalent amounts of Integrated resources upon the effective date of Rate Schedule SLCA–F1. The effective date is expected to be on or before the first day of the October 1987 billing period. A brochure explaining the reasons for including a power factor surcharge and outlining the methodology used in developing the proposed Integrated rate will be distributed to the customers of the Integrated Projects and other interested parties. Since the proposed Integrated rate is a major rate adjustment as defined by the current procedures for public participation in general rate adjustments, public information and comment forums are required. At least one combined public information/comment forum will be held. After public discussions and review of public comments, Western will determine a final proposal Integrated rate.

DATES: The consultation and comment period will begin with publication of this notice in the Federal Register and will end February 17, 1987.

A public information forum, at which Western will outline the methodology used in developing the Integrated rate, will be held at the Hotel Utah, Main and South Temple, Salt Lake City, Utah, 1 p.m., on November 20, 1986. Western will answer questions at this forum. A public comment forum, at which Western will receive oral and written comments, will be held at the Hotel Utah, Main and South Temple, Salt Lake City, Utah, at 8:30 a.m. on December 18, 1986. Written comments should be received by the end of the consultation and comment period to be assured of consideration and may be sent to the address below.

FOR FURTHER INFORMATION CONTACT: Mr. Lloyd Greiner, Area Manager, Salt Lake City Area Office, Western Area Power Administration, P.O. Box 11606, Salt Lake City, UT 84147, (801) 524–5493.

SUPPLEMENTARY INFORMATION: Power rates for the Integrated Projects are established pursuant to the Department of Energy Organization Act of August 4, 1977, 42 U.S.C. 7101, *et seq.*; the Reclamation Act of 1902, ch. 1093, 372 Stat. 388 (1902), as amended and supplemented by subsequent enactments, particularly section 9(c) of the Reclamation Project Act of 1939, 43 U.S.C. 485h(c); and the acts specifically applicable to the projects involved.

The Secretary of the Department of Energy, by Declaration Order No. 0204–108 (48 FR 55664, December 14, 1983), as amended at 51 FR 19744 on May 30, 1986, delegated to the Administrator of Western the authority to develop power and transmission rates; to the Under Secretary of Energy the authority to confirm, approve, and place such rates in effect on an interim basis; and to the Federal Energy Regulatory Commission the authority to either confirm and approve and place in effect on a final basis, to remand, or to disapprove such rates.

The procedures for public participation in rate adjustments for power marketed by Western at 10 CFR Part 903 were published in the Federal Register at 50 FR 37835 on September 18, 1985.

Availability of Information

All brochures, studies, comments, letters, memorandums, and other documents made or kept by Western for the purpose of developing the proposed Integrated rate are and will be available for inspection and copying at the Salt Lake City Area Office.

Regulatory Flexibility Analysis

Pursuant to the Regulatory Flexibility Act of 1980 (5 U.S.C. 601, *et seq.*) each agency, when required by 5 U.S.C. 553 to publish a proposed rule, is further required to prepare and make available for public comment an initial regulatory flexibility analysis to describe the impact of the proposed rule on small entities. In this instance, the initiation of the Integrated rate relates to nonregulatory services provided by Western at a particular rate. Under 5 U.S.C. 601(2), rules of particular applicability relating to rates or services are not considered rules within the meaning of the act. Since the Integrated rate is of limited applicability, no flexibility analysis is required.

Determination Under Executive Order 12291

The Department of Energy has determined that this is not a major rule because it does not meet the criteria of section 1(b) of Executive Order 12291 (46 FR 13193, February 19, 1981). In addition, Western has an exemption from sections 3, 4, and 7 of Executive Order 12291; and therefore, will not prepare a regulatory impact statement.

Environmental Evaluation

In compliance with the National Environmental Policy Act of 1969, Council of Environmental Quality regulations, and DOE guidelines, Western conducts environmental evaluations of certain rate and allocation actions. Under integration, the existing Collbran and Rio Grande customers will receive from the Integrated Projects, through FY 1989, fixed commitments approximately equal to amounts they are now receving. This will result in decreased costs to these customers. Western analyzed the effect this would have on consumption as a part of its Post-1989 Marketing Criteria Environmental Assessment (DOE EA-0265) and found that it did not significantly affect consumption. For the post-1989 period, these customers will receive reduced allocations from the Integrated Projects. Western has also

compared the effect of the proposed Integrated rate, as it will increase the charges to CRSP customers, to the rate of inflation in the period since the existing CRSP power rate was placed in effect. Since increased consumption from lower rates is insignificant and since the proposed differential increase in the Integrated rate does not exceed the rate of inflation, an environmental assessment is not required, and a memorandum to this effect will be prepared and copies will be sent to interested persons upon request.

Issued at Golden, Colorado, October 28, 1986.

William H. Clagett,

Administrator.

[FR Doc. 86-25083 Filed 11-4-86; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL-3106-4]

Availability of Technical Report on Oil, Gas and Geothermal Industry Waste and Announcement of Public Meetings

AGENCY: Environmental Protection Agency.

ACTION: Notice of Availability of Report and Public Meetings.

SUMMARY: Section 8002(m) of the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. 6982(m) requires EPA to study the adverse effects, if any, of drilling fluids, produced waters, and other wastes associated with the exploration, development or production of crude oil or natural gas, or geothermal energy on human health and the environment. Section 3001(b) of RCRA exempts these wastes from regulation as hazardous waste until EPA: (1) Produces a Report to Congress on the study required by 8002(m); (2) provides opportunity for public comment and hearings(s); (3) makes a regulatory determination; and (4) regulations are authorized by Act of Congress.

In August, 1985, the Alaska Center for the Environment sued EPA (Alaska Center for the Environment *vs.* Lee Thomas) on EPA's failure to conduct this study. EPA signed a consent order which obligates the Agency to meet several milestone dates and to submit the final Report to Congress on August 31, 1987. One such milestone is to complete a Technical Report by October 31, 1986. This **Federal Register** notice announces the availability of that Technical Report and public meetings to accept comments on it.

In the Technical Report, EPA presents a profile of the oil and gas industry and the geothermal industry. EPA also describes the methodologies to be used to gather information and prepare the final Report to Congress which must address: (1) The sources and volumes of discarded material generated per year from such wastes; (2) present disposal practices; (3) potential danger to human health and the environment from the surface runoff or leachate; (4) documented cases which prove or have caused danger to human health and the environment from surface runoff or leachate; (5) alternatives to current disposal methods; (6) the cost of such alternatives; and (7) the impact of those alternatives on the exploration for, and development and production of, crude oil and natural gas or geothermal energy. Two public meetings will be held in conjunction with the availability of this Technical Report.

DATES: Due to time constraints imposed by the court-ordered deadlines, public comments on this report should be submitted as soon as possible. The Agency prefers that comments be submitted no later than December 15, 1986. EPA will hold two public meetings pertaining to this Technical Report: December 3, 1986 in Washington, D.C., and December 5, 1986 in New Orleans, Louisiana.

ADDRESSES: The locations of the public meetings are.

Park Terrace Hotel, 1515 Rhode Island Avenue, Washington, D.C. 20005, (202) 232-7000

New Orleans Marriott Hotel, 555 Canal Street, New Orleans, Louisiana 70140, (504) 581-1000

The meetings will begin at 9:30 a.m. and will end at 4:30 p.m. If there are no remaining comments, the meetings will adjourn earlier. If you wish to present oral comments at one of the meetings, please notify, in writing, Ms. Geraldine Wyer, Office of Solid Waste (WH-562), U.S. EPA, 401 M Street, SW., Washington, DC 20460.

For the convenience of attendees requiring overnight accommodations, sleeping rooms have been reserved at both hotels the evening preceding the meetings. Please make your reservations by contacting the hotel directly. The document entitled, Technical Report: Waste from the Exploration, Development and Production of Crude Oil, Natural Gas and Geothermal Energy, An Interim Report on Methodology for Data Collection and Analysis, is available for viewing at all EPA Regional libraries and in the EPA RCRA Docket (sub-basement), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC, 20460, from 9:30 a.m. to 3:30 p.m., Monday through Friday, except Federal holidays, by appointment only. Appointments can be made by calling Mia Zmud at (202) 475-9327 or Kate Blow at (202) 382-4675. The public may copy a maximum of 50 pages of material from any one regulatory docket at no cost. Additional copies costs 20 cents per page. The public must send an original and two copies of their comments to: Docket Clerk, Office of Solid Waste (WH-562), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. Place the docket number F-86-OGRN-FFFFF on your comments.

FOR FURTHER INFORMATION CONTACT: RCRA/Superfund Hotline (800) 424-9346 or (202) 382-3000. For technical information, contact Mr. Bob Hall (202) 475-7415.

Dated: October 31, 1986.

J. Winston Porter,

Assistant Administrator, Office of Solid Waste and Emergency Response.

[FR Doc. 86-25099 Filed 11-4-86; 8:45 am]

BILLING CODE 6560-50-M

[OPP-50661; FRL-3103-3]

Issuance of Experimental Use Permits: Chevron Chemical Co. et al.

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has granted experimental use permits to the following applicants. These permits are in accordance with, and subject to, the provisions of 40 CFR Part 172, which defines EPA procedures with respect to the use of pesticides for experimental purposes.

FOR FURTHER INFORMATION CONTACT: By mail, the product manager cited in each experimental use permit at the address below: Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

In person or by telephone: Contact the product manager at the following address at the office location or telephone number cited in each experimental use permit: 1921 Jefferson Davis Highway, Arlington, VA.

SUPPLEMENTARY INFORMATION: EPA has issued the following experimental use permits:

239-EUP-104. Extension. Chevron Chemical Company, 940 Hensley St., Richmond, CA 94804-0036. This experimental use permit allows the use

of 213 pounds of the insecticide alpha-cyano-3-phenoxybenzyl, 2,2,3,3-tetramethylcyclopropanecarboxylate on apples and pears to evaluate the control of various insects. A total of 160 acres are involved; the program is authorized only in the States of California, Colorado, Massachusetts, Michigan, Missouri, New Jersey, New York, North Carolina, Ohio, Oregon, Pennsylvania, Virginia, Washington, and West Virginia. The experimental use permit is effective from June 6, 1986 to June 6, 1987. A temporary tolerance for residues of the active ingredient in or on apples and pears has been established. (George LaRocca, PM 15, Rm. 204, CM#2 (703-557-2400))

464-EUP-85. Amendment. Dow Chemical Company, P.O. Box 1706, Midland, MI 48640. In the **Federal Register** of June 4, 1986 (51 FR 20342), EPA issued an experimental use permit pertaining to the issuance of 464-EUP-85 to Dow Chemical Company. At the request of the company, the permit has been amended to add four States and to reduce the acreage. The experimental use permit allows the use of 750 pounds of the herbicide 2-(3,5-dichlorophenyl)-2-(2,2,2,-trichloroethyl)oxirane on grain sorghum to evaluate the control of broadleaf weeds and grasses. A total of 1,500 acres are involved; the program is authorized only in the States of Alabama, Arkansas, Georgia, Illinois, Kansas, Missouri, Mississippi, Tennessee, Nebraska, Oklahoma, and Texas. The experimental use permit is effective from April 9, 1986 to April 9, 1988. A temporary tolerance for residues of the active ingredient in or on grain sorghum has been established. (Robert Taylor, PM 25, Rm. 245, CM#2 (703-557-1800))

279-EUP-86. Extension. FMC Corporation, 2000 Market St., Philadelphia, PA 19103. This experimental use permit allows the use of 88.7 pounds of the insecticide cypermethrin on various crops to evaluate the control of various insects. A total of 160 acres are involved; the program is authorized in the States of Alabama, Arizona, California, Colorado, Florida, Georgia, Idaho, Kansas, Michigan, Minnesota, Montana, Nebraska, New Jersey, New York, North Carolina, North Dakota, Oklahoma, Oregon, South Dakota, Tennessee, Texas, Virginia, Washington, Wisconsin, and Wyoming. The experimental use permit is effective from July 22, 1986 to July 22, 1987. This permit is issued with the limitation that all treated crops are destroyed or used for research purposes only. (George LaRocca, PM 15, Rm. 204, CM#2 (703-557-2400))

3125-EUP-188. Extension. Mobay Chemical Corporation, Hawthorn Road, P.O. Box 4913, Kansas City, MO 64120. This experimental use permit allows the use of 2,250 pounds of the insecticide cyano(4-fluoro-3-phenoxyphenyl)methyl-3-(2,2-dichloroethenyl)-2,2-dimethylcyclopropanecarboxylate on cotton to evaluate the control of various insects. A total of 3,000 acres are involved; the program is authorized only in the States of Alabama, Arizona, Arkansas, California, Georgia, Louisiana, Mississippi, Oklahoma, South Carolina, Tennessee, and Texas. The experimental use permit is effective from June 6, 1986 to June 6, 1987. A temporary tolerance for residues of the active ingredient in or on cottonseed has been established. (George LaRocca, PM 15, Rm. 204, CM#2 (703-557-2400))

476-EUP-102. Issuance. Stauffer Chemical Company, 1200 South 47th St., Richmond, CA 94804. This experimental use permit allows the use of 1,875 pounds of the herbicide trimethylsulfonium carboxymethylaminomethylphosphonate on noncropland to evaluate the control of broadleaf weeds and grasses. A total of 7,500 acres (3,750 acres to be treated each year) are involved. (Robert Taylor, PM 25, Rm. 245, CM#2 (703-557-1800))

476-EUP-103. Issuance. Stauffer Chemical Company, 1200 South 47th St., Richmond, CA 94804. The experimental use permit allows the use of 1,875 pounds of the herbicide trimethylsulfonium carboxymethylaminomethylphosphonate on noncropland to evaluate the control of broadleaf weeds and grasses. A total of 7,500 acres (3,750 acres to be treated each year) are involved; this program and the one above are authorized in the States of Alabama, Arkansas, Arizona, Colorado, Connecticut, Delaware, Florida, Georgia, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Michigan, Minnesota, Mississippi, Montana, North Carolina, North Dakota, Nebraska, New Jersey, New Mexico, New York, Nevada, Ohio, Oklahoma, Oregon, Pennsylvania, South Carolina, South Dakota, Tennessee, Texas, Utah, Virginia, Washington, Wisconsin, and Wyoming. Both permits are effective from July 16, 1986 to July 16, 1988. The permits will use the same active ingredient but different formulations. (Robert Taylor, PM 25, Rm. 245, CM#2 (703-557-1800))

264-EUP-59. Extension. Union Carbide Agricultural Products Company, Inc., T.W. Alexander Drive, P.O. Box 12014, Research Triangle Park, NC 27709. This experimental use permit allows the use of 4,000 pounds of the growth regulator ethephon on sugarcane to evaluate flower inhibition and biomass increase following treatment of sugarcane. A total of 5,000 acres are involved; the program is authorized only in the State of Hawaii. The experimental use permit is effective from July 14, 1986 to July 14, 1988. A temporary tolerance for residues of the active ingredient in or on sugarcane has been established. A food additive tolerance for residues of the active ingredient in or on sugarcane molasses has been established. (Robert Taylor, PM 25, Rm. 245, CM#2 (703-557-1800))

264-EUP-64. Extension. Union Carbide Agricultural Products Company, Inc., P.O. Box 12014, T.W. Alexander Drive, Research Triangle Park, NC 27709. This experimental use permit allows the use of 3,752 pounds of the insecticide thiodicarb on field corn to evaluate the control of various insects. A total of 2,500 acres are involved; the program is authorized in the States of Colorado, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maryland, Michigan, Minnesota, Missouri, Nebraska, New Mexico, North Carolina, North Dakota, Ohio, South Dakota, Texas, West Virginia, and Wisconsin. The experimental use permit is effective from July 7, 1986 to July 7, 1987. Temporary tolerances for residues of the active ingredient in or on field corn grain and corn fodder and forage have been established. (Larry Schnaubelt, PM 12, Rm. 202, CM#2 (703-557-2386))

Persons wishing to review these experimental use permit are referred to the designated product managers. Inquiries concerning these permits should be directed to the persons cited above. It is suggested that interested persons call before visiting the EPA office, so that the appropriate file may be made available for inspection purposes from 8:00 a.m. to 4:00 p.m., Monday through Friday, excluding legal holidays.

Authority: 7 U.S.C. 136c.

Dated: October 22, 1986.

James W. Akerman,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 86-24556 Filed 11-4-86; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-59229A (FRL-3105-1)]

Toxic Substances; Approval of Test Marketing Exemption

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces EPA's approval of an application for a test marketing exemption (TME) under section 5(h)(6) of the Toxic Substances Control Act (TSCA), TME–86–58. The test marketing conditions are described below.

EFFECTIVE DATE: October 27, 1986.

FOR FURTHER INFORMATION CONTACT: Susan Hodges, Premanufacture Notice Management Branch, Chemical Control Division (TS–794), Environmental Protection Agency, RM. E–613, 401 M St. SW., Washington, DC 20460 (202–382–2260).

SUPPLEMENTARY INFORMATION: Section 5(h)(1) of TSCA authorizes EPA to exempt persons from premanufacture notification (PMN) requirements and permit them to manufacture or import new chemical substances for test marketing purposes if the Agency finds that the manufacture, processing, distribution in commerce, use, and disposal of the substance for test marketing purposes will not present any unreasonable risk of injury to health or the environment. EPA may impose restrictions on test marketing activities and may modify or revoke a test marketing exemption upon receipt of new information which casts significant doubt on its finding that the test marketing activity will not present any unreasonable risk of injury.

EPA hereby approves TME–86–58. EPA has determined that test marketing of the new chemical substance described below, under the conditions set out in the TME application, and for the time period and restrictions specified below, will not present any unreasonable risk of injury to health or the environment. Production volume, use, and the number of customers must not exceed those specified in the application. All other conditions and restrictions described in the application and in this notice must be met.

The following additional restrictions apply to TME–86–58. Any person who may be exposed to the test market substance during manufacturing, processing, or use must wear impervious gloves, chemical safety goggles or full face shields, and aprons. A bill of lading and Material Safety Data Sheet (MSDS) accompanying each shipment must state that use of the substance is restricted to that approved in the TME, and that any person who may be exposed to the test market substance must wear the above described protective equipment. In addition, the Company shall maintain the following records until 5 years after the dates they are created, and shall make them available for inspection or copying in accordance with section 11 of TSCA:

1. The applicant must maintain records of the quantity of the TME substance produced.

2. The applicant must maintain records of dates of the shipments to the customer and the quantities supplied in each shipment.

3. The applicant must maintain copies of the bill of lading and MSDS that accompanies each shipment of the TME substance.

4. The applicant must maintain records of persons who wear impervious gloves and clothes, chemical safety goggles or full face shields, and aprons during the manufacturing, processing, and use the TME substance.

T–86–58.

Date of Receipt: August 29, 1986.

Notice of Receipt: September 10, 1986 (51 FR 175).

Applicant: Monsanto Company.

Chemical: (G) Substituted Amide.

Use: (G) Chelating agent for chemical process in closed system.

Production Volume: Confidential.

Number of Customers: 1.

Worker Exposure: 10 workers—8 hrs/day—40 days/yr.

Test Marketing Period: 18 months.

Commencing on: October 27, 1986.

Risk Assessment: EPA identified potential health concerns for the PMN substance by analogy to acetamide, which is a potential carcinogen. However, EPA has determined that the use of appropriate protective equipment durng manufacturing, processing and use will significantly reduce exposure and potential risk. EPA identified no significant environmental concerns. Therefore, the test market substance will not present any unreasonable risk of injury to health or the environmental.

Public Comments: None.

The Agency reserves the right to rescind approval or modify the conditions and restrictions of an exemption should any new information come to its attention which casts significant doubt on its findings that the test market activities will not present any unreasonable risk of injury to health or the environment.

Dated: October 27, 1986.

Charles L. Elkins,

Director, Office of Toxic Substances.

[FR Doc. 86–24993 Filed 11–4–86; 8:45 am]
BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirement Submitted to the Office of Management and Budget for Review

October 27, 1986.

The Federal Communications Commission has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1980, 44 U.S.C. 3507.

Copies of this submission may be purchased from the Commission's duplicating contractor, International Transcription Service, 2100 M Street, NW., Suite 140, Washington, DC 20037, telephone (202) 857–3800. Persons wishing to comment on this information collection should contact J. Timothy Sprehe, Office of Management and Budget, Room 3235 NEOB, Washington, DC 20503, telephone (202) 395–4814. For further information contact Doris Benz, Federal Communications Commission, telephone (202) 632–7513.

OMB No.: 3060–0028

Title: Application for Authorization in the Auxiliary Radio Broadcast Services

Form No.: FCC 313

Action: Revision (Environmental Impact data only)

Estimated Annual Burden: 2,620 Responses; 13,100 Hours.

William J. Tricarico,

Secretary.

[FR Doc. 86–24949 Filed 11–4–86; 8:45 am]
BILLING CODE 6712–01–M

Public Information Collection Requirements Submitted to the Office of Management and Budget for Review

October 27, 1986.

The Federal Communications Commission has submitted the following information collection requirements to OMB for review and clearance under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Copies of these submissions may be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037. For further information on these submissions contact Jerry Cowden, Federal Communications Commission, (202) 632–7513. Persons wishing to

comment on these information collections should contact J. Timothy Sprehe, Office of Management and Budget, Room 3235 NEOB, Washington, DC 20503, (202) 395–4814.

OMB No.: 3060–0174
Title: Section 73.1212, Sponsorship identification; list retention; related requirements
Action: Extension
Respondents: Licensees of broadcast stations
Estimated Annual Burden: 1,150 Recordkeepers; 115 Hours.

OMB No.: 3060–0216
Title: Section 73.3538, Application to make changes in an existing station
Action: Extention
Respondents: Licensees of broadcast stations filing to make changes in station authorization
Estimated Annual Burden: 50 Responses; 400 Hours.

OMB No.: 3060–0211
Title: Section 73.1940, Broadcasts by Candidates for Public Office
Action: Extension
Respondents: Licensees of broadcast stations
Estimated Annual Burden: 11,703 Recordkeepers; 73,144 Hours.

William J. Tricarico,
Secretary.
[FR Doc. 86–24950 Filed 11–4–86; 8:45 am]
BILLING CODE 6712–01–M

[Report No. W–11]

Window Notice for the Filing of FM Broadcast Applications.

Released: October 28, 1986.

Notice is hereby given that applications for vacant FM broadcast allotment(s) listed below may be submitted for filing during the period beginning October 28, 1986 and ending December 8, 1986 inclusive. Selection of a permittee from a group of acceptable applicants will be by the Comparative Hearing process. *See Report and Order* in Docket 85–383 released September 3, 1986.

Channel—254A

Holmes Beach, FL

Federal Communications Commission.

William J. Tricarico,
Secretary.
[FR Doc. 86–24951 Filed 11–4–86; 8:45 am]
BILLING CODE 6712–01–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–781–DR]

Major Disaster and Related Determinations for State of Alaska

AGENCY: Federal Emergency Management Agency.
ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Alaska (FEMA–781–DR), dated October 27, 1986, and related determinations.

DATED: October 27, 1986.

FOR FURTHER INFORMATION CONTACT: Sewall H.E. Johnson, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472 (202) 646–3616.

Notice

Notice is hereby given that, in a letter of October 27, 1986, the President declared a major disaster under the authority of the Disaster Relief Act of 1974, as amended (42 U.S.C. 5121 *et seq.*, Pub. L. 93–288), as follows:

I have determined that the damage in certain areas of the State of Alaska resulting from an Arctic sea storm, high winds, and wave action beginning on or about September 20, 1986, is of sufficient severity and magnitude to warrant a major—disaster declaration under Pub. L. 93–288. I therefore declare that such a major disaster exists in the State of Alaska.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under Pub. L. 93–288 for Public Assistance will be limited to 75 percent of total eligible costs in the designated area.

The time period prescribed for the implementation of section 313(a), priority to certain applications for public facility and public housing assistance, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Ms. Joan F. Hodgins of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Alaska to have been affected adversely by this declared major disaster and are designated eligible as follows:

North Slope Borough and the City of Kotzebue in the Northwest Arctic Borough for Public Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Julius W. Becton, Jr.,
Director.
[FR Doc. 86–24986 Filed 11–4–86; 8:45 am]
BILLING CODE 6718–02–M

[FEMA–782–DR]

Notice of Major Disaster and Related Determination for State of Alaska

AGENCY: Federal Emergency Management Agency.
ACTION: Notice.

SUMMARY: This is a notice of the Presidential declarationof a major disaster for the State of Alaska (FEMA–782–DR), dated October 27, 1986, and related determinations.

DATE: October 27, 1986.

FOR FURTHER INFORMATION CONTACT: Sewall H.E. Johnson, Disaster Assistance Programs, Federal Emergency Management Agency Washington, DC 20472 (202) 646–3616.

Notice

Notice is hereby given that, in letter of October 27, 1986, the President declared a major disaster under the authority of the Disaster Relief Act of 1974, as amended (42 U.S.C. 5121 *et seq.*, Pub. L. 93–288), as follows:

I have determined that the damage in certain areas of the State of Alaska resulting from severe storms and flooding beginning on or about October 10, 1986, is of sufficient severity and magnitude to warrant a major-disaster declaration under Pub. L. 93–288. I therefore declare that such a major disaster exists in the State of Alaska.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for administrative expenses. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under Pub. L. 93–288 for Public Assistance will be limited to 75 percent of total eligible costs in the designated area.

The time period prescribed for the implementation of section 313(a), priority to certain applications for public facility and public housing assistance, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Ms. Joan F. Hodgins of the Federal Emergency Management

Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Alaska to have been affected adversely by this declared major disaster and are designated eligible as follows:

Matanuska-Susitna Borough, Kenai Peninsula Borough and the City of Cordovo for Individual Assistance and Public Assistance.

That portion of the Alaska Railroad south of the Community of Healy for Public Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Julius W. Becton, Jr.,

Director.

[FR Doc. 86-24987 Filed 11-4-86; 8:45 am]

BILLING CODE 6718-02-M

[FEMA-776-DR]

Amendment to Notice of a Major-Disaster Declaration for State of Illinois

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Illinois (FEMA-776-DR), dated October 7, 1986, and related determinations.

DATED: October 29, 1986.

FOR FURTHER INFORMATION CONTACT: Sewall H.E. Johnson, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-3616.

Notice

The notice of a major disaster for the State of Illinois, dated October 7, 1986, is hereby amended to include the following area among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of October 7, 1986:

The Cook County Township of River Forest for Public Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Dave McLoughlin,

Deputy Associate Director, State and Local Programs and Support, Federal Emergency Management Agency.

[FR Doc. 86-24988 Filed 11-4-86; 8:45 am]

BILLING CODE 24988-03-M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No: 202-010656-015
Title: North Europe Gulf Freight Association
Parties:
Atlanticargo (South Atlantic Cargo Shipping NV)
Compagnie Generale Maritime (CGM)
Lykes Bros, Steamship Co., Inc.
Gulf Container Line (GCL), B.V.
Nedlloyd Lijnen, B.V.
Hapag-Lloyd AG
Sea-Land Service, Inc.
Trans Freight Lines
United States Lines, Inc.

Synopsis: The proposed amendment would extend current agreement provisions concerning Wallenius Line (WL) and the transportation of vehicular cargo and non-containerizable cargo carried in WL's car carrier vessels through June 30, 1987. The parties have requested a shortened review period.

By Order of the Federal Maritime Commission.

Dated: October 31, 1986.

Joseph C. Polking,

Secretary.

[FR Doc. 86-24985 Filed 11-4-86; 8:45 am]

BILLING CODE 6730-01-M

GENERAL SERVICES ADMINISTRATION

SES Performance Review Boards for Small Client Agencies Serviced by GSA; Names of Members

Section 4314(C) (1) through (5) of title 5, U.S.C., requires each agency to establish, in accordance with guidelines prescribed by the Office of Personnel Management, one or more Performance Review Boards. The board shall review and evaluate the initial appraisal by the supervisor of a senior executive's performance, along with any recommendations to the appointing authority relative to the performance of the senior executive.

As provided under section 601 of the Economy Act of 1932, as amended, 31 U.S.C. 1535, the General Services Administration through its External Services Staff, Personnel Division, provides various personnel management services to a number of diverse Presidential commissions, committees and other small agencies and boards through reimbursable administrative support agreements. This notice is on behalf of these client agencies, and it supersedes all other notices in the **Federal Register** on this subject.

Because of their small size, a Performance Review Board register has been established in which all SES-member client agencies participate. The Board is composed of SES members from the various agencies. From this register of names, the head of each client agency will appoint executives to a specific board to serve the particular agency.

The members whose names appear on the Performance Review Board register to serve client agencies are:

Lindley S. Sloan, Executive Director, Japan U.S. Friendship Commission
Bruce D. Porter, Executive Director, Board for International Broadcasting
Anatole Shub, Foreign Information Officer, Board for International Broadcasting
Mark G. Pomar, Deputy Executive Director, Board for International Broadcasting
Stephen L. Babcock, Executive Director, Administrative Conference of the U.S.
Richard K. Berg, General Counsel, Administrative Conference of the U.S.
Jeffrey S. Lubbers, Research Director, Administrative Conference of the U.S.
Ralph A. Watkins, Jr., Chairman, Navajo and Hopi Indian Relocation Commission
Sandra L. Masseto, Commissioner
Hawley Atkinson, Commissioner, Navajo and Hopi Indian Relocation Commission
Navajo and Hopi Indian Relocation Commission.

FOR FURTHER INFORMATION CONTACT: Delois B. Hammonds, External Services Staff, Personnel Division (202-453-5370); mailing address: General Services Administration, National Capital Region (WCPX), Washington, DC 20407

Dated: October 29, 1986.

James A. Williams,

Acting Regional Administrator, National Capital Region.

[FR Doc. 86-24952 Filed 11-4-86; 8:45 am]

BILLING CODE 6820-34-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

1987 Cost-of-Living Increase and Other Determinations

AGENCY: Social Security Administration, HHS.

ACTION: Notice.

SUMMARY: The Secretary has determined—

1. A 1.3 percent cost-of-living increase in benefits under title II (section 215(i)) of the Social Security Act (the Act);

(2) An increase in the Federal SSI (title XVI) benefit amounts for 1987 to $4,080 for an eligible individual, $6,120 for an eligible individual with an eligible spouse, and $2,040 for an essential person (section 1617 of the Act);

(3) The average of the total wages for 1985 to be $16,822.51;

(4) The Social Security contribution and benefit base to be $43,800 for remuneration paid in 1987 and self-employment income earned in taxable years beginning in 1987;

(5) The amount of earnings a person must have to be credited with a quarter of coverage in 1987 to be $460;

(6) The monthly exempt amounts under the Social Security retirement earnings test for taxable years ending in calendar year 1987 to be $680 for beneficiaries age 65 through 69 and $500 for beneficiaries under age 65;

(7) The "old-law" contribution and benefit base to be $32,700 for 1987.

We also describe the computation of benefits for a worker and the worker's family who first become eligible for benefits in 1987, and the computation of the OASDI fund ratio used to determine whether the automatic increase in benefits under title II of the Act is affected by the "stabilizer" provision.

Finally, we are publishing a table of OASDI "special mimimum" benefit amounts. This table provides the range of primary insurance amounts and the corresponding maximum family benefits under the "special minimum" benefit provision, as revised to reflect the automatic benefit increase. These benefits are payable to certain individuals with long periods of relatively low earnings.

FOR FURTHER INFORMATION CONTACT: Jeffrey L. Kunkel, Office of the Actuary, Social Security Administration, 6401 Security Boulevard, Baltimore, Maryland 21235, telephone (301) 594-3877.

SUPPLEMENTARY INFORMATION: The Secretary is required by the Act to publish within 45 days after the close of the third calendar quarter of 1986 the benefit increase percentage and the revised table of "special minimum" benefits (section 215(i)(2)(D)). Also, the Secretary is required to publish before November 1 the average of the total wages for 1985 (section 215(i)(2)(C)(iii)) and the OASDI fund ratio for 1986 (section 215(i)(2)(C)(iii)). Finally, the Secretary is required to publish on or before November 1 the contribution and benefit base for 1987 (section 230(a)), the amount of earnings required to be credited with a quarter of coverage in 1987 (section 213(d)(2)), the monthly exempt amounts under the Social Security retirement earnings test for 1987 (section 203(f)8)(A)), the formula for computing a primary insurance amount for workers who first become eligible for benefits or die in 1987 (section 215(a)(1)(D)), and the formula for computing the maximum amount of benefits payable to the family of a worker who first becomes eligible for old-age benefits or dies in 1987 (section 203(a))2)(C)).

Cost-of-Living Increases

General. The cost-of-living increase is 1.3 percent for benefits under titles II and XVI of the Social Security Act.

Under title II, old-age, survivors, and disability insurance benefits will increase by 1.3 precent beginning with the December 1986 benefits, which are payable on January 2, 1987. The kinds of benefits payable to individuals entitled under this program are old-age, disability, wife's, husband's, child's, widow's, widower's, mother's, father's, and parent's insurance benefits. This increase is based on the authority contained in section 215(i) of the Act (42 U.S.C. 415(i) as modified by Pub. L. 99-509).

Under title XVI, Federal SSI payment levels will also increase by 1.3 percent effective for payments made for the month of January 1987 but paid on December 31, 1986. This is based on the authority contained in section 1617 of the Act (42 U.S.C. 1382f). The percentage increase effective January 1987 is the same as the title II benefit increase and the annual payment amount is rounded, when not a multiple of $12, to the next lower multiple of $12.

Automatic Benefit Increase Computation. Under section 215(i) of the Act, the third calendar quarter of 1986 is a cost-of-living computation quarter for all the purposes of the Act. The Secretary is, therefore, required to increase benefits, effective with December 1986, for individuals entitled under section 227 or 228 of the Act, to increase primary insurance amounts of all other individuals entitled under title II of the Act, and to increase maximum benefits payable to a family. For December 1986, the benefit increase is the percentage increase in the Consumer Price Index for Urban Wage Earners and Clerical Workers from the third quarter of 1985 through the third quarter of 1986. Automatic benefit increases may be modified by a "stabilizer" provision under certain adverse financial conditions that are described in the section on the OASDI fund ratio. The December 1986 benefit increase is not affected by this provision.

Section 215(i)(1) of the Act provides that the Consumer Price Index for a cost-of-living computation quarter shall be the arithmetical mean of this index for the 3 months in that quarter. The Department of Labor's Consumer Price Index for Urban Wage Earners and Clerical Workers for each month in the quarter ending September 30, 1985, was: for July 1985, 319.1; for August 1985, 319.6; and for September 1985, 320.5. The arithmetical mean for this calendar quarter is 319.7 (after rounding to the nearest 0.1). The corresponding Consumer Price Index for each month in the quarter ending September 30, 1986 was: for July 1986, 322.9; for August 1986, 323.4; and for September 1986, 324.9. The arithmetical mean for this calendar quarter is 323.7. Thus, because the Consumer Price Index for the calendar quarter ending September 30, 1986 exceeds that for the calendar quarter ending September 30, 1985 by 1.3 percent, a cost-of-living benefit increase of 1.3 percent is effective for benefits under title II of the Act beginning December 1986.

Title II Benefit Amounts. In accordance with section 215(i) of the Act, in the case of insured workers and family members for whom eligibility for benefits (i.e., the worker's attainment of age 62, or disability or death before age 62) occurred before 1987, benefits will increase by 1.3 percent beginning with benefits for December 1986 which will be received in January 1987. In the case of first eligibility after 1986, the 1.3 percent increase will not apply.

For eligibility after 1978, benefits are generally determined by a benefit formula provided by the Social Security Amendments of 1977 (Pub. L. 95-216), as described later in this notice.

For eligibility before 1979, benefits are determined by means of a benefit table. In accordance with section 215(i)(4) of the Act, the primary insurance amounts and the maximum family benefits shown in this table are revised by (1) increasing by 1.3 percent the corresponding amounts established by the last cost-of-living increase and the last extension of the benefit table made under section 215(i)(4) (to reflect the increase in the contribution and benefit base for 1986); and (2) by extending the table to reflect the higher monthly wage and related benefit amounts now possible under the increased contribution and benefit base for 1987, as described later in this notice. A copy of this table may be obtained by writing to: Social Security Administration, Office of Governmental Affairs, Office of Public Inquiries, 4100 Annex, Baltimore, Maryland 21235.

Section 215(i)(2)(D) of the Act requires that, when the Secretary determines an automatic increase in Social Security benefits, the Secretary shall publish in the **Federal Register** a revision of the range of the primary insurance amounts and corresponding maximum family benefits based on the dollar amount and other provision described in section 215(a)(1)(C)(i). These benefits are referred to as "special minimum" benefits and are payable to certain individuals with long periods of relatively low earnings. In accordance with section 215(a)(1)(C)(i), the attached table shows the revised range of primary insurance amounts and corresponding maximum family benefit amounts after the 1.3 percent benefit increase.

Section 227 of the Act provides flat-rate benefits to a worker who became age 72 before 1969 and was not insured under the usual requirements, and to his or her spouse or surviving spouse. Section 228 of the Act provides similar benefits at age 72 for certain uninsured persons. The current monthly benefits amount of $138.50 for an individual under sections 227 and 228 of the Act is increased by 1.3 percent to obtain the new amount of $140.30. The present monthly benefit amount of $69.40 for a spouse under section 227 is increased by 1.3 percent to $70.30.

Title XVI Benefit Amounts. In accordance with section 1617 of the Act, Federal SSI benefit amounts for the aged, blind, and disabled are increased by 1.3 percent effective January 1987. Therefore, the yearly Federal SSI benefit amount of $4,032 for an eligible individual, $6,048 for an eligible individual with an eligible spouse and $2,016 for an essential person, which are effective January 1986, are increased, effective with January 1987, to $4,080, $6,120, and $2,040 respectively after rounding. The monthly payment amount is determined by dividing the yearly amount by 12, and subtracting monthly countable income. In the case of an eligible individual with an eligible spouse, the amount payable is further divided equally between the two spouses.

Average of the Total Wages for 1985

The determination of the average wage figure for 1985 is based on the 1984 average wage figure of $16,135.07 announced in the **Federal Register** on Octobr 31, 1985 (50 FR 45558), along with the percentage increase in average wages from 1984 to 1985 measured by annual wage data tabulated by the Social Security Administration (SSA). The average amounts of wages calculated directly from this data were $15,250.75 and $15,900.51 for 1984 and 1985, respectively. To determine an average wage figure for 1985 at a level that is consistent with the series of average wages for 1951–1977 (published December 29, 1978, at 43 FR 61016), we multiplied the 1984 average wage figure of $16,135.07 by the percentage increase in average wages from 1984 to 1985 (based on the SSA-tabulated wage data) as follows (with the result rounded to the nearest cent): Average wage for 1985 = $16,135.07 × $15,900.51 ÷ $15,250.75 = $16,822.51. Therefore, the average wage for 1985 is determined to be $16,822.51.

Contribution and Benefit Base

General. The contribution and benefit base is $43,800 for remuneration paid in 1987 and self-employment income earned in taxable years beginning in 1987.

The contribution and benefit base serves two purposes:

(1) It is the maximum annual amount of earnings on which Social Security taxes are paid, and

(2) It is the maximum annual amount used in determining a person's Social Security benefits.

Computation. Section 230(c) of the Act provides a table with the contribution and benefit base for each year 1978, 1979, 1980, and 1981. For years after 1981, section 230(b) of the Act contains a formula for determining the contribution and benefit base. Under the prescribed formula, the contribution and benefit base for 1987 shall be equal to the 1986 base of $42,000 multiplied by the ratio of: (1) the average amount, per employee, of total wages for the calendar year 1985 to (2) the average amount of those wages for the calendar year 1984. Section 230(b) further provides that if the amount so determined is not a multiple of $300, it shall be rounded to the nearest multiple of $300.

Average Wages. The average wage for calendar year 1984 was previously determined to be $16,135.07. The average wage for calendar year 1985 has been determined to be $16,822.51 as stated herein.

Amount. The ratio of the average wage for 1985, $16,822.51, compared to that for 1984, $16,135.07, is 1.0426053. Multiplying the 1986 contribution and benefit base of $42,000 by the ratio 1.0426053 produces the amount of $43,789.42 which must then be rounded to $43,800. Accordingly, the contribution and benefit base is determined to be $43,800 for 1987.

Quarter of Coverage Amount

General. The 1987 amount of earnings required for a quarter of coverage is $460. A quarter of coverage is the basic unit for determining whether a worker is insured under the Social Security program. For years before 1978, an individual generally was credited with a quarter of coverage for each quarter in which wages of $50 or more were paid, or an individual was credited with 4 quarters of coverage for every taxable year in which $400 or more of self-employment income was earned. Beginning in 1978, wages generally are no longer reported on a quarterly basis; instead, annual reports are made. With the change to annual reporting, section 352(b) of the Social Security Amendments of 1977 (Pub. L. 95–216) amended section 213(d) of the Act to provide that a quarter of coverage would be credited for each $250 of an individual's total wages and self-employment income for calendar year 1978 (up to a maximum of 4 quarters of coverage for the year). Individuals generally must have self-employment income of at least $400 in a taxable year in order to be credited with any quarters of coverage.

Computation. Under the prescribed formula, the quarter of coverage amount for 1987 shall be equal to the 1978 amount of $250 multiplied by the ratio of: (1) the average amount, per employee, of total wages for calendar year 1985 to (2) the average amount of those wages reported for calendar year 1976. The section further provides that if the amount so determined is not a multiple of $10, it shall be rounded to the nearest multiple of $10.

Average Wages. The average wage for calendar year 1976 was previously determined to be $9,226.48. This was published in the **Federal Register** on

December 29, 1978, at 43 FR 61016. The average wage for calendar year 1985 has been determined to be $16,822.51 as stated herein.

Quarter of Coverage Amount. The ratio of the average wage for 1985, $16,822.51, compared to that for 1976, $9,226.48, is 1.823286. Multiplying the 1978 quarter of coverage amount of $250 by the ratio of 1.823286 produces the amount of $455.82 which must then be rounded to $460. Accordingly, the quarter of coverage amount is determined to be $460 for 1987.

Retirement Earnings Test Exempt Amounts

(a) *Beneficiaries Aged 70 or Over.* Beginning with months after December 1982, there is no limit on the amount an individual aged 70 or over may earn and still receive Social Security benefits.

(b) *Beneficiaries Aged 65 through 69.* The retirement earnings test monthly exempt amount for beneficiaries aged 65 through 69 is stated in the Act at section 203(f)(8)(D) for years 1978 through 1982. A formula is provided in section 203(f)(8)(B) for computing the exempt amount applicable for years after 1982. The monthly exempt amount for 1986 was determined by this formula to be $650. Under the formula, the exempt amount of 1987 shall be the 1986 exempt amount multiplied by the ratio of: (1) the average amount, per employee, of the total wages for calendar year 1985 to (2) the average amount of those wages for calendar year 1984. The section further provides that if the amount so determined is not a multiple of $10, it should be rounded to the nearest multiple of $10.

Average Wages. Average wages for this purpose are determined in the same way as for the contribution and benefit base. Therefore, the ratio of the average wages of 1985, $16,822.51 compared to that for 1984, $16,135.07, is 1.0426053.

Exempt Amount for Beneficiaries Aged 65 through 69. Multiplying the 1986 retirment earnings test monthly exempt amount of $650 by the ratio of 1.0426053 produces the amount of $677.69. This must then be rounded to $680. Thus, the retirement earnings test monthly exempt amount for beneficiaries aged 65 through 69 is determined to be $680 for 1987. The corresponding retirement earnings test annual exempt amount for these beneficiaries is $8,160.

(c) *Beneficiaries Under Age 65.* Section 203 of the act provides that beneficiaries under age 65 have a lower retirement earnings test monthly exempt amount than those beneficiaries aged 65 through 69. The exempt amount for beneficiaries under age 65 is determined by a formula provided in section 203(f)(8)(B) of the Act. Under the formula, the monthly amount for beneficiaries under age 65 is $480 for 1986. The formual provides that the exempt amount for 1987 shall be the 1986 exempt amount for beneficiaries under age 65 multiplied by the ratio of: (1) the average amount, per employee, of the total wages for calendar year 1985 to (2) the averge amount of those wages for calendar year 1985. The section further provides that if the amount so determined is not a multiple of $10, it shall be rounded to the nearest multiple of $10.

Average Wages. Average wages for this purpose are determined in the same way as for the contribution and benefit base. Therefore, the ratio of the average wages of 1985, $16,822.51, compared to that of 1984, $16,135.07, is 1.0426053.

Exempt Amount for Beneficiaries Under Age 65. Multiplying the 1986 retirement earnings test monthly exempt amount of $480 by the ratio 1.0426053 produces the amount of $500.45. This must then be rounded to $500. The retirement earnings test monthly exempt amount for beneficiaries under age 65 is thus determined to be $500 for 1987. The corresponding retirement earnings test annual exempt amount of these beneficiaries is $6,000.

Computing Benefits After 1978

The Social Security Amendments of 1977 changed the formula for determining an individual's primary insurance amount after 1978. This basic new formula is based on "wage indexing" and was fully explained with interim regulations and final regulations published in the **Federal Register** on December 29, 1978 (43 FR 60877) and July 15, 1982 (47 FR 30732) respectively. It generally applies when a worker after 1978 attains age 62, becomes disabled, or dies before age 62. This formula uses the worker's earnings after they have been adjusted, or "indexed," in proportion to the increase in average wages of all workers. Using this method, we determine the worker's "average indexed monthly earnings." We then compute the primary insurance amount, using the worker's average indexed monthly earnings. The computation formula is adjusted automatically each year to reflect changes in general wage levels.

Average Indexed Monthly Earnings. To assure that a worker's future benefits reflect the general rise in the standard of living that occurs during his or her working lifetime, we adjust or "index" the worker's past earnings to take into account the change in general wage levels that has occurred during the worker's years of employment. These adjusted earnings are then used to compute the worker's primary insurance amount.

For example, to compute the average indexed monthly earnings for a worker attaining age 62, becoming disabled, or dying before attaining age 62, 1987, we divide the average of the total wages for 1985, $16,822.51 by the average of the total wages for each year prior to 1985 in which the worker had earnings. We then multiply the actual wages and self-employment income as defined in section 211(b) of the act credited for each year by the corresponding ratio to obtain the worker's adjusted earnings for each year. After determining the number of years we must use to compute the primary insurance amount, we pick those years with highest indexed earnings, total those indexed earnings and divide by the total number of months in those years. This figure is rounded own to the next lower dollar amount, and becomes the average indexed monthly earnings figure to be used in computing the worker's primary insurance amount of 1987.

Computing the Primary Insurance Amount. The primary insurance amount is the sum of three separate percentages of portions of the average indexed monthly earnings. In 1979 (the first year the formula was in effect), these portions were the first $180, the amount between $180 and $1,085, and the amount over $1,085. The amounts for 1987 are obtained by multiplying the 1979 amounts by the ratio between the average of the total wages for 1985, $16,822.51, and for 1977, $9,779.44. These results are then rounded to the nearest dollar. For 1987, the ratio is 1.720192. Multiplying the 1979 amounts of $180 and $1,085 by 1.720192 produces the amounts of $309.63 and $1,866.41. These must then be rounded to $310 and $1,866. Accordingly, the portions of the average indexed monthly earnings to be used in 1987 are determined to be the first $310, the amount between $310 and $1,866, and the amount over $1,866.

Consequently, for individuals who first become eligible for old-age insurance benefits or disability insurance benefits in 1987, or who die in 1987 before becoming eligible for benefits, we will compute their primary insurance amount by adding the following:

(a) 90 percent of the first $310 of their average indexed monthly earnings, plus

(b) 32 percent of the average indexed monthly earnings over $310 and through $1,866, plus

(c) 15 percent of the average indexed monthly earnings over $1,866.

This amount is then rounded to the next lower multiple of $.10 if it is not already a multiple of $.10. This formula and the adjustments we have described are contained in section 215(a) of the Act (42 U.S.C. 415(a)).

Maximum Benefits Payable to a Family

The 1977 Amendments continued the long-established policy of limiting the total monthly benefits which a worker's family may receive based on his or her primary insurance amount. Those amendments also continued the then existing relationship between maximum family benefits and primary insurance amounts but did change the method of computing the maximum amount of benefits which may be paid to a worker's family. The Social Security Disability Amendments of 1980 (Pub. L. 96–265) established a new formula for computing the maximum benefits payable to the family of a disabled worker. This new formula is applied to the family benefits of workers who first become entitled to disability insurance benefits after June 30, 1980, and who first become eligible for these benefits after 1978. The new formula was explained in a Final Rule published in the **Federal Register** on May 8, 1981, at 46 FR 25601. For disabled workers initially entitled to disability benefits before July 1980, or whose disability began before 1979, the family maximum payable is computed the same as the old-age and survivor family maximum.

Computing the Old-Age and Survivor Family Maximum. The formula used to compute the family maximum is similar to that used to compute the primary insurance amount. It involves computing the sum of four separate percentages of portions of the worker's primary insurance amount. In 1979, these portions were the first $230, the amount between $230 and $332, the amount between $332 and $433, and the amount over $433. The amounts for 1987 are obtained by multiplying the 1979 amounts by the ratio between the average of the total wages for 1985, $16,822.51, and the average for 1977, $9,779.44. This amount is then rounded to the nearest dollar. For 1987, the ratio is 1.720192. Multiplying the amounts of $230, $332, and $433 by 1.720192 produces the amounts of $395.64, $571.10, and $744.84. These amounts are then rounded to $396, $571, and $745. Accordingly, the portions of the primary insurance amounts to be used in 1987 are determined to be the first $396, the amount between $396 and $571, the amount between $571 and $745, and the amount over $745.

Consequently, for the family of a worker who becomes age 62 or dies in 1987, the total amount of benefits payable to them will be computed so that it does not exceed:

(a) 150 percent of the first $396 of the worker's primary insurance amounts, plus

(b) 272 percent of the worker's primary insurance amount over $396 through $571, plus

(c) 134 percent of the worker's primary insurance amount over $396 through $745, plus

(d) 175 percent of the worker's primary insurance amount over $396 through $745.

This amount is then rounded to the next lower multiple of $.10 if it is not already a multiple of $.10. This formula and the adjustments we have described are contained in section 203(a) of the Act (42 U.S.C. 403(a)).

"Old-Law" Contribution and Benefit Base

General. The 1987 "old-law" contribution and benefit base is $32,700. This is the base that would have been effective under the Social Security Act without the enactment of the 1977 amendments. The base is computed under section 230(b) of the Social Security Act as it read prior to the 1977 amendments.

The "old-law" contribution and benefit base is used by:

(1) The Railroad Retirement program to determine certain tax liabilities and tier II benefits payable under that program to supplement the tier I payment which correspond to basic Social Security benefits,

(2) The Pension Benefit Guaranty Corporation to determine the maximum amount of pension guaranteed under the Employee Retirement Income Security Act. (This use is stated in section 230(d) of the Social Security Act.), and

(3) Social Security to determine a "year of coverage" in computing the "special minimum" benefit and in computing benefits for persons who are also eligible to receive pensions based on employment not covered under section 210 of the Social Security Act.

Computation. The base is computed using the automatic adjustment formula in section 230(b) of the Act as it read prior to the enactment of the 1977 amendments. Under the formula, the "old-law" contribution and benefit base shall be the "old-law" 1986 base multiplied by the ratio of: (1) the average amount, per employee, of total wages for the calendar year 1985 to (2) the average amount of those wages for the calendar year 1984. If the amount so determined is not a multiple of $300, it shall be rounded to the nearest multiple of $300.

Average Wages. The average wage for calendar year 1984 was previously determined to be $16,135.07. The average wage for calendar year has been determined to be $16,822.51, as stated herein.

Amount. The ratio of the average wage for 1985, $16,822.51 compared to that for 1984, $16,135.07, is 1.0426053. Multiplying the 1986 "old-law" contribution and benefit base amount of $31,500 by the ratio of 1.0426053 produces the amount of $32,842.07 which must then be rounded to $32,700. Accordingly, the "old-law" contribution and benefit base is determined to be $32,700 for 1987.

OASDI Fund Ratio

General. Section 215(i) of the Act was amended by section 112 of Pub. L. 98–21, the Social Security Amendments of 1983, to include a "stabilizer" provision that can limit the automatic OASDI benefit increase under certain circumstances. If the combined assets of the OASI and DI Trust Funds, as a percentage of annual expenditures, are below a specified level, the automatic benefit increase is equal to the lesser of: (1) the increase in average wages or (2) the increase in prices. The threshold level specified for the OASDI fund ratio is 15.0 percent for benefit increases for December of 1984 through December 1988, and 20.0 percent thereafter. The amendments also provide for subsequent "catch-up" benefit increase for beneficiaries whose previous benefit increases were affected by this provision. "Catch-up" benefit increases occur only when trust fund assets exceed 32.0 percent of annual expenditures.

Computation. Section 215(i) specifies the computation and application of the OASDI fund ratio. The OASDI fund ratio for 1986 is defined as the ratio of: (1) the combined assets of the OASI and DI Trust Funds at the beginning of 1986, including advance tax transfers for January 1986 and excluding amounts owed to the Hospital Insurance (HI) Trust Fund, to (2) the estimated expenditures of the OASI and DI Trust Funds during 1986, excluding payments of interest and principal on amounts owed to the HI Trust Fund and transfer payments between the OASI and DI Trust Funds, and reducing any transfers to the Railroad Retirement Account by any transfers from that account into either trust fund.

Ratio. The combined assets of the OASI and DI Trust Funds at the beginning of 1986 (including advance tax transfers for January 1986 and excluding amounts owed to the HI Trust Fund) equaled $47,901 million, and the

expenditures are estimated to be $201,802 million. Thus, the OASDI fund ratio for 1986 is 23.7 percent, which exceeds the applicable threshold of 15.0 percent. As a result, the "stabilizer" provision does not affect the benefit increase for December 1986.

(Catalog of Federal Domestic Assistance Programs Nos. 13.802–13.805. and 13.807 Social Security Programs.)

Dated: October 31, 1986.

Otis R. Bowen,

Secretary of Health and Human Services.

SPECIAL MINIMUM PRIMARY INSURANCE AMOUNTS AND MAXIMUM FAMILY BENEFITS

Special minimum primary insurance amount payable for Dec. 1985	No. of years required at minimum earnings level	Special minimum primary insurance amount payable for Dec. 1986	Special minimum maximum family benefit payable for Dec. 1986
19.20	11	19.40	29.20
38.10	12	38.50	58.00
57.20	13	57.90	87.10
76.20	14	77.10	115.90
95.20	15	96.40	144.70
114.40	16	115.80	173.90
133.40	17	135.10	202.70
152.50	18	154.40	231.70
171.50	19	173.70	260.60
190.40	20	192.80	289.40
209.60	21	212.30	318.60
228.60	22	231.50	347.50
247.80	23	251.00	376.70
266.80	24	270.20	405.50
285.70	25	289.40	434.20
305.00	26	308.90	463.60
324.00	27	328.20	492.50
343.00	28	347.40	521.20
361.90	29	366.60	550.20
380.90	30	385.80	579.00

[FR Doc. 86–25002 Filed 11–3–86; 11:34 am]
BILLING CODE 4190–11–M

Family Support Administration

Refugee Resettlement Program; Proposed Statement of Goals, Priorities, Standards, and Guidelines for the Unaccompanied Minor Refugee and Cuban/Haitian Entrant Programs

AGENCY: Office of Refugee Resettlement (ORR), FSA, HHS.

ACTION: Notice of proposed goals, priorities, standards, and guidelines for the programs for refugee and Cuban/Haitian entrant unaccompanied minors.

SUMMARY: This notice proposes establishment of goals, priorities, standards, and guidelines for the Unaccompanied Minor Refugee and Cuban/Haitian Entrant Programs. The Standards are amplifications of ORR child welfare regulations (45 CFR Part 400, Subpart H, Sections 400.110–120). The Guidelines in most cases reflect recommendations of a National Interagency Work Group on Unaccompanied Minors.

DATE: Comments on this proposal will be considered if received by December 22, 1986.

ADDRESS: Address written comments, in duplicate, to: William R. Eckhof, Office of Refugee Resettlement, Room 1229, Switzer Building, 330 C St. SW., Washington, DC 20201.

FOR FURTHER INFORMATION CONTACT: William R. Eckhof, (202) 245–0980.

Subject: ORR Statement of Program Goals, Standards, and Guidelines for the Refugee and Entrant Unaccompanied Minors Program.

Authority

Section 412(a)(6) of the Immigration and Nationality Act (the "INA"), as amended by the Refugee Act of 1980, (the "Act"), 8 U.S.C 1522(a)(6): "As a condition for receiving assistance under this section, a State must . . . (B) meet standards, goals, and priorities, developed by the Director, which assure the effective resettlement of refugees . . . and the effective provision of services . . . ."

Section 412(d)(2)(A) of the INA, 8 U.S.C. 1522(d)(2)(A): The Director is authorized to provide assistance, reimbursement to States, and grants to and contracts with public and private nonprofit agencies, for the provision of child welfare services, including foster care maintenance payments and services and health care . . ."

Section 412(d)(2)(B) of the INA, 8 U.S.C. 1522(d)(2)(B): (i) In the case of a refugee child who is unaccompanied by a parent or other close adult relative (as defined by the Director), the services described in subparagraph (A) may be furnished until the month after the child attains eighteen years of age (or such higher age as the State's child welfare services plan under part B of title IV of the Social Security Act prescribes for the availability of such services to any other child in that State).

(ii) The Director shall attempt to arrange for the placement under the laws of the States of such unaccompanied refugee children, who have been accepted for admission to the United States, before (or as soon as possible after) their arrival in the United States. During any interim period while such child is in United States or in transit to the United States but before the child is so placed, the Director shall assume legal responsibility (including financial responsibility) for the child, if necessary, and is authorized to make necessary decisions to provide for the child's immediate care."

Title V of Refugee Education Assistance Act of 1980, enacted on October 10, 1980, provides for Federal assistance and services to individuals having Cuban/Haitian Entrant status. Under this Act, the President is required to exercise authorities identical to those under chapter 2 of title IV of the Immigration and Nationality Act (INA) with respect to Cuban/Haitian entrants.

Introduction

Basis and Purpose of the Program

It is basis the and purpose of the program to provide appropriate care, consistent with State and Federal child welfare laws and practices, for unaccompanied minor refugees and entrants and to prepare them for productive lives in the United States.

To ensure the most effective possible resettlement of unaccompanied minor refugees in the United States consistent with and as mandated by the applicable provisions of the Refugee Act of 1980, as well as compliance with 45 CFR Part 400, Subpart H, "Child Welfare Services," the Office of Refugee Resettlement (ORR) establishes the following program goals, priorities, standards, and guidelines for the State-administered refugee resettlement program (RRP) for FY 1987 and the following fiscal years. These goals and standards will be applied to the Cuban/Haitian Entrant Unaccompanied Minor Program, for the States which participate in that program.

Definitions

The provider agency. An organization, either public or private, which provides placement and direct service to the unaccompanied minor.

The supervising agency. The public agency, either State or local, which supervises the provider agency.

The contracting agency. The public agency which either contracts with a private contractor or a county for care of the child.

I. Program Goals

The goals of the program are for unaccompanied minor refugees and entrants are:

—To reunify unaccompanied refugee children with their parents or, within the context of State child welfare practice, with non-parental adult relatives.

—To help unaccompanied minors develop appropriate skills to enter adulthood and achieve economic and social self-sufficiency, through delivery of child welfare services in a culturally sensitive manner.

II. Priorities for State Program Administration

—To place unaccompanied minor refugees and entrants in least restrictive care settings as soon as possible, and to establish legal responsibility in such a way, under State law, as to ensure that these children receive the full range of assistance, care, and services to which all children in the State are entitled, and to designate a legal authority to act in

place of the child's unavailable parent(s).

—To encourage reunification of minors with their parents, or other appropriate adult relatives to work with supportive resources, such as voluntary refugee resettlement agencies, at the State and local levels, to facilitate such reunion.

—To provide child welfare services and refugee-specified services that will help children adjust to their communities, with emphasis on those services most likely to help children prepare for emancipation/self-supporting status, appropriate to their age and development. States should strive to ensure provision of services in a cost-effective manner. Cost should generally parallel those of the State's regular domestic child welfare program, except where consideration given to unique cultural, language, and psychological needs of the refugee clientele mandates different costs.

—In attempting to arrange placement of unaccompanied minor refugees under State child welfare laws, to make every effort to ensure a cooperative and effective working relationship between the State, voluntary agencies, and provider agencies participating in the Refugee and Entrant Unaccompanied Minors Programs.

III. Program Standards

The program for unaccompanied minor refugees requires a unique blend of services and program management, with specific cognizance of both refugee resettlement concerns and child welfare practices. Likewise, it requires a high degree of cooperation, coordination, and planning among numerous entities at various levels.

In requiring the Director of the Office of Refugee Resettlement to "attempt to arrange for the placement under the laws of the State . . ." of unaccompanied minor refugees, the Refugee Act implies an effort by the Director to effect this cooperation, coordination, and planning. In consequence, the Director of the Office of Refugee Resettlement hereby establishes the following Standards for operation of the State-administered unaccompanied minor refugee and entrant program. Compliance with the regulations under which these standards are issued (45 CFR Part 400 Subpart H) is mandatory.

Administration/Management

A. Annual Planning

Standard: A cooperative, effective, well-coordinated, and culture-sensitive working relationship exists among agencies involved in the unaccompanied minors program.

Criterion: A State or county supervising and/or contracting agency for refugee children confers at least annually with provider agencies therein to discuss program needs and problems, and to establish numbers of children to be served in the coming year within the State.

B. State Leadership Role

Standard: The State provides adequate organizational leadership and administrative support for the State unaccompanied minors program.

Criteria: 1. Basic requirements of 45 CFR 400.5 (Refugee Resettlement Program State Regulations) and 45 CFR 400.110–400.120 are in place and are adhered to.

2. State rules or regulations provide the same child welfare services and benefits for refugee children, to the same extent, as those which are provided to other children of the same age in the State under a State's title IV–B plan, and in accordance with the state's child welfare standards, practices, and procedures.

3. The State provides foster care maintenance payments under the State's title IV–E program to any refugee children eligible under that program.

4. Rules, regulations, and procedures are in place whereby the State assumes program accountability for all aspects of the program, including fiscal and program reporting.

5. The program is structured within State government in such a way that meaningful input into programmatic issues is provided by *both* the State's refugee program and child welfare staffs.

6. State goals and objectives do not alter or infringe upon program goals of ORR as set forth herein.

7. Child welfare services, assistance procedures, and facilities meet recognized standards consistent with the State Plan pursuant to title IV–B of the Social Security Act.

C. Monitoring and Reporting

Standard: The State effectively monitors services to unaccompanied minor refugees and entrants.

Criteria: 1. Written State procedures, consistent with the State's Refugee Resettlement Plan, ensure that the appropriate supervising child welfare agency monitors activity of the provider agency at least annually.

2. The monitoring instruments reflect regular State standards for foster care, and ORR standards for unaccompanied minors care as applicable.

3. Corrective actions are taken promptly on problems identified during fiscal and program monitoring.

4. All ORR–3 (Placement) Reports are filed with ORR within 30 days of the date of placement, and within 60 days of a change of status (e.g., change of placement or legal responsibility, reunification with adult relatives, and termination from the program (e.g., emancipation or reunification with parent(s))).

5. All ORR–4 (Progress) Reports are filed with ORR annually.

Legal Considerations

A. Legal Responsibility

Standard: Legal responsibility is established promptly under State child welfare laws.

Criteria: 1. The State or State-authorized child welfare provider agency petitions an appropriate court to establish legal responsibility within 30 days of the child's arrival at the location of resettlement and placement, if action by a court is required by State law.

2. The section of State law under which legal responsibility is established makes the unaccompanied minor eligible for the full range of assistance, care, and services to which all children in the State are entitled.

2. The section of State law under which legal responsibility is established designates a legal authority to act in place of the child's unavailable parent(s).

4. Procedures exist to ensure that mechanisms of the Interstate Compact on Placement of Children are utilized when an interstate placement is required subsequent to initial placement.

5. Procedural safeguards exist which ensure that the rights of the minor's unavailable parent(s) are protected, and are not terminated as long as reunification with the parents remains reasonably possible, as determined by an appropriate State court.

B. Family Reunion

Standard: Written State policy encourage the reunion in the United States of unaccompanied minor refugees with their parents or other appropriate relatives.

Criteria: 1. Programs for unaccompanied minor refugees are located in areas which have, or have ready access to, existing refugee resettlement agencies which are able to effect family reunion.

2. Children are encouraged to apply for admission of their parents to the United States, and are assisted with

preparation of the necessary documentation, including applications.

3. When reunion becomes possible following arrival of a parent or parents in the United States, the provider agency assists children and parent(s) in the process, as necessary, for up to 90 days after the agency has knowledge of the presence of the parents, after which ORR unaccompanied minor benefits cease.

Programmatic

A. Case Planning

Standard

The unaccompanied minor is provided appropriate child welfare and refugee specific services to develop the skills necessary for social, emotional, and economic self-sufficiency.

Criteria

1. State regulations or rules provide that a written case plan for the care and supervision of each child, including a service plan, leading to non-dependent emancipation or family reunion, is developed, and reviewed for each child semi-annually. The case plan at a minimum addresses each of the following areas:

—social adjustment
—English language training
—career planning
—education/training as appropriate
—health needs
—suitable mode of care in the least restrictive setting
—development of socialization skills
—family reunification
—preservation of ethnic and religious heritage
—mental health needs, if necessary.

IV. Guidelines for Program Development

The Director of the Office of Refugee Resettlement further establishes the following Guidelines for Program Development, developed by a special national workgroup of experts in care for unaccompanied minors, composed of representatives of national voluntary agencies, local provider agencies, State government, the Department of State, and ORR. These guidelines are strongly recommended by the Director as a yardstick against which current provider activities may be evaluated by State or county supervising/contracting agencies, and against which possible future placements may be planned by national voluntary agencies.

A. Cost Effectiveness

Guideline

The program is administered in a cost-effective manner.

Criteria

1. Costs for refugee children are consistent with costs for other children in care in the State.

2. Cost is a consideration when evaluating overall program effectiveness, but should not exist as an isolated criterion. Minimum program standards must be addressed at first as a context from which to evaluate the effectiveness and costs of unaccompanied minors programs.

3. To assure effective staff utilization and to provide a sufficiently broad range of services and types of care, at least 30 children are participating in provider-operated local programs.

4. The provider agency attempts to access non-ORR funded resources (such as the Job Training Partnership Act, Job Corps, vocational education, scholarships to preparatory schools and colleges).

B. Provider Agency Staff Qualifications

Guideline

A well-qualified provider agency staff is utilized to provide services.

Criteria

1. Supervisors, at a minimum, meet established State standards for persons providing similar services in non-refugee child care agencies.

2. The provider agency has on-staff (a) bilingual, bicultural worker(s) specific to the clientele served.

3. The bilingual, bicultural worker(s) are utilized as an integral part of the program's service function, and not merely as translator(s).

4. Bilingual, bicultural workers are encouraged to actively pursue training opportunities that will help them to become qualified under State standards.

5. At least 50 hours, annually, of ongoing, planned staff development activities are provided for each staff member, including program supervisors, directly involved in provision of services.

6. The direct-services staff ratio of clients to service workers is not greater than the State's standard for non-refugee child care.

C. Placement Options

Guideline

The provider agency maintains, or has access to, a range of suitable placement options.

Criteria

1. Placement options include family foster homes, ethnically matched foster homes, group homes, and supervised independent living.

2. To the maximum feasible extent, children 12 years of age and younger are placed in ethnically matched foster homes to support their understanding of their native culture.

3. No more than 30 percent of the existing caseload have had more than two placements (exclusive of placements in reception centers, reception homes, temporary/emergency placements not exceeding 45 days, or planned independent living situations).

4. No more than 10 percent of the existing caseload have had more than three placements (same exclusions as item 3 above).

5. Before family foster care is utilized, the foster family receives training and information related to cultural sensitivities of the caseload.

D. Preparation for Emancipation

Guideline

The program actively and formally promotes the responsible emancipation of unaccompanied minors.

Criteria

1. Program components provide independent living skills services to assist unaccompanied minors to prepare adequately for emancipation without reliance on public assistance.

2. The public cash assistance dependency rate for employable former unaccompanied minors, subsequent to their emancipation, is no greater than 10 percent of all the provider agency's refugee emancipees 90 days following emancipation.

3. State law is sufficiently flexible to permit an unaccompanied minor to remain in care through the completion of high school (but not beyond the 21st birthday).

E. Retention of Ethnic Heritage

Guideline

Children are encouraged to retain an understanding of, and respect for, their native culture and religion.

Criteria

1. Programs for unaccompanied minor refugees are located in geographic areas which have ethnic communities similar to those of the children placed.

2. Children are placed within ethnically similar communities, or in areas that are readily accessible to the activities of those communities.

3. Provider agencies maintain a written plan and periodic schedule for exposure to and participation in appropriate cultural events.

F. Health and Mental Health

Guideline

Children are provided with necessary health and mental health services.

Criteria

1. The provider agency maintains ongoing access to health and mental health services.
2. The provider agency has a written contingency plan involving identification of potential resources for coping with cases of severe mental health disorders.

Dated: August 8, 1986.

Billie F. Gee,

Acting Director, Office of Refugee Resettlement.

[FR Doc. 86-24812 Filed 11-4-86; 8:45 am]

BILLING CODE 4150-04-M

Food and Drug Administration

[Docket No. 86M-0403]

Bausch & Lomb Optics Center; Premarket Approval of Bausch & Lomb® Fizziclean™ Protein Remover, Bausch & Lomb® Extended Wear Protein Remover, and Bausch & Lomb® Therma-Zymne™ Protein Remover

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its approval of the application by Baucsh & Lomb Optics Center, Rochester, NY, for premarket approval, under the Medical Device Amendments of 1976, of BAUSCH & LOMB® FIZZICLEAN™ Protein Remover, BAUSCH & LOMB® Extended Wear Protein Remover, and BAUSCH & LOMB® THERMA-ZYME™ Protein Remover for use with soft (hydrophilic) contact lenses. After reviewing the recommendation of the Ophthalmic Devices Panel, FDA's Center for Devices and Radiological Health (CDRH) notified the applicant of the approval of the application.

DATE: Petitions for administrative review by December 5, 1986.

ADDRESS: Written requests for copies of the summary of safety and effectiveness data and petitions for administrative review to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: David M. Whipple, Center for Devices and Radiological Health (HFZ-460), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301-427-7940.

SUPPLEMENTARY INFORMATION: On December 24, 1985, Bausch & Lomb Optics Center, Rochester, NY 14692, submitted to CDRH an application for premarket approval of BAUSCH & LOMB® FIZZICLEAN™ Protein Remover, BAUSCH & LOMB® Extended Wear Protein Remover, and BAUSCH & LOMB® THERMA-ZYME™ Protein Remover. The BAUSCH & LOMB® FIZZICLEAN™ Protein Remover is indicated for use in heat or chemical lens care systems in the weekly cleaning of soft (hydrophilic) contact lenses. The BAUSCH & LOMB® Extended Wear Protein Remover is indicated for use in a heat or chemical lens care system for periodic cleaning of extended wear soft (hydrophilic) contact lenses. The BAUSCH & LOMB® THERMA-ZYME™ Protein Remover is indicated for use during heat disinfection in the weekly cleaning of soft (hydrophilic) contact lenses that can be heat disinfected.

On July 18, 1986, the Ophthalmic Devices Panel, an FDA advisory committee, reviewed and recommended approval of the application. On September 19, 1986, CDRH approved the application by a letter to the applicant from the Director of the Office of Device Evaluation, CDRH.

A summary of the safety and effectiveness data on which CHRH based its approval is on file in the Dockets Management Branch (address above) and is available from that office upon written requests. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

A copy of all approved labeling is available for public inspection at CDRH—contact David M. Whipple (HFZ-460), address above.

The labeling of the device states that the solution is indicated for weekly or periodic cleaning of soft (hydrophilic) contact lenses. Manufacturers of soft (hydrophilic) contact lenses that have been approved for marketing are advised that whenever CDRH publishes a notice in the **Federal Register** of the approval of a new solution for use with an approved soft contact lens, the manufacturer of each lens shall correct its labeling to refer to the new solution at the next printing or at such other time as CDRH prescribes by letter to the applicant.

Opportunity for Administration Review

Section 515(d)(3) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360e(d)(3)) authorizes any interested person to petition, under section 515(g) of the act (21 U.S.C. 360e(g)), for administrative review of CDRH's decision to approve this application. A petitioner may request either a formal hearing under Part 12 (21 CFR Part 12) of FDA's administrative practices and procedures regulations or a review of the application and CDRH's action by an independent advisory committee of experts. A petition is to the in the form of a petition for reconsideration under § 10.33(b) (21 CFR 10.33(b)). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the **Federal Register**. If FDA grants the petition, the notice will state the issue to be reviewed, the form of review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before December 5, 1986, file with the Dockets Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 515(d), 520(h), 90 Stat. 554-555, 571 (21 U.S.C. 360e(d), 360j(h))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Devices and Radiological Health (21 CFR 5.53).

Dated: October 28, 1986.

John C. Villforth,

Director, Center for Devices and Radiological Health.

[FR Doc. 86-24954 Filed 11-4-86; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 86M-0408]

CILCO®, Inc.; Premarket Approval of CDS II™ (Sodium Chondroitin Sulfate)

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its approval of the application by CILCO®,

Inc., Huntington, WV, for premarket approval, under the Medical Device Amendments of 1976, of CDS II™ (Sodium Chondroitin Sulfate). After reviewing the recommendation of the Ophthalmic Devices Panel, FDA's Center for Devices and Radiological Health (LDRD) notified the applicant of the approval of the application.

DATE: Petitions for administrative review by December 5, 1986.

ADDRESS: Written requests for copies of the summary of safety and effectiveness data and petitions for administrative review to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Philip J. Phillips, Center for Devices and Radiological Health (HFZ–460), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–8221.

SUPPLEMENTARY INFORMATION: On January 14, 1983, CILCO®, Inc., Huntington, WV 25701, submitted to CDRH and application for premarket approval of CDS II™, (Soldium Chondroitin Sulfate). CDS II™ (Sodium Chondroitin Sulfate) is indicated for use as a surgical aid in anterior segment procedures including cataract extraction, intraocular lens implantation, corneal transplant surgery, and glaucoma filtering surgery on pseudophakic and aphakic eyes.

On Novemer 18, 1983, the Ophthalmic Devices Panel, an FDA advisory committee, reviewed and recommended approval of the application. On September 30, 1986, CDRH approved the application by a letter to the applicant from the director of the Office of Device Evaluation, CDRH.

A summary of the safety and effectiveness data on which CDRH based its approval is on file in the Dockets Management Branch (address above) and is available from that office upon written request. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

A copy of all approved labeling is available for public inspection at CDRH—contact Philip J. Phillips (HFZ–460), address above.

Opportunity for Administrative Review

Section 515(d)(3) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360e(d)(3)) authorizes any interested person to petition, under section 515(g) of the act (21 U.S.C. 360e(g)), for administrative review of CDRH's decision to approve this application. A petitioner may request either a formal hearing under Part 12 (21 CFR Part 12) of FDA's administrative practices and procedures regulations or a review of the application and CDRH's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration under § 10.33(b) (21 CFR 10.33(b)). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the Federal Register. If FDA grants the petition, the notice will state the issue to be reviewed, the form of review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before December 5, 1986, file with the Dockets Management (address above) two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 515(d), 520(h), 90 Stat. 554–555, 571 (21 U.S.C. 360e(d), 360j(h))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Devices and Radiological Health (21 CFR 5.53).

Dated: October 28, 1986.

John C. Villforth,

Director, Center for Devices and Radiological Health.

[FR Doc. 86–24955 Filed 11–4–86; 8:45 am]

BILLING CODE 4160–01–M

[Docket No. 86M–0409]

CooperVision, Inc.; Premarket Approval of the MiraFlow® Extra Strength Cleaner

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its approval of the application by CooperVision Inc., Mountain View, CA, for premarket approval, under the Medical Device Amendments of 1976, of the MiraFlow® Extra Strength Cleaner. After reviewing the recommendation of the Opthalmic Devices Panel, FDA's Center for Devices and Radiological Health (CDRH) notified the applicant of the approval of the application.

DATE: Petitions for administrative review by December 5, 1986.

ADDRESS: Written requests for copies of the summary of safety and effectiveness data and petitions for administrative review to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: David M. Whipple, Center for Devices and Radiological Health (HFZ–460), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7940.

SUPPLEMENTARY INFORMATION: On August 12, 1985, CooperVision, Inc., Mountain View, CA 94039, submitted to CDRH an application for premarket approval of the MiraFlow® Extra Strength Cleaner. The MiraFlow® Extra Strength Cleaner is indicated for use to clean soft (hydrophilic) contact lenses each time the lenses are removed for disinfecting. The solution is to be used in either a heat or chemical lens disinfection system.

On January 24, 1986, the Ophthalmic Devices Panel, an FDA advisory committee, reviewed and recommended approval of the application. On September 30, 1986, CDRH approved the application by a letter to the applicant from the Director of the Office of Device Evaluation, CDRH.

A summary of the safety and effectiveness data on which CDRH based its approval is on file in the Dockets Management Branch (address above) and is available from that office upon written request. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

A copy of all approved labeling is available for public inspection at CDRH—contact David M. Whipple (HFZ–460), address above.

The labeling of the device states that the solution is indicated for cleaning soft (hydrophilic) contact lenses. Manufacturers of any soft (Hydrophilic) contact lenses that have been approved for marketing are advised that whenever CDRH publishes a notice in the Federal Register of the approval of a new solution for use with an approved soft contact lens, the manufacturer of each lens shall correct its labeling to refer to the new solution at the next printing or

at such other time as CDRH prescribes by letter to the applicant.

Opportunity for Administrative Review

Section 515(d)(3) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360e(d)(3)) authorizes any interested person to petition, under section 515(g) of the act (21 U.S.C. 360e(g)), for administrative review of CDRH's decision to approve this application. A petitioner may request either a formal hearing under Part 12 (21 CFR Part 12) of FDA's administrative practices and procedures regulations or a review of the application and CDRH's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration under § 1033(b) (21 CFR 10.33(b)). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the **Federal Register**. If FDA grants the petition, the notice will state the issue to be reviewed, the form of review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before December 5, 1986, file with the Dockets Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 515(d), 520(h), 90 Stat. 554–555, 571 (21 U.S.C. 360e(d), 360j(h))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Devices and Radiological Health (21 CFR 5.53).

Dated: October 28, 1986.

John C. Villforth,

Director, Center for Devices and Radiological Health.

[FR Doc. 86–24956 Filed 11–4–86; 8:45 am]

BILLING CODE 4160–01–M

Health Care Financing Administration

[OA–003–N]

Medicare/Medicaid; Request for Comments on Long-Term Health Care Insurance Policies

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice of request for comments.

SUMMARY: Under section 10(a)(3) of the Federal Advisory Committee Act (Pub. L. 92–463, as amended), we are requesting, on behalf of the Long-Term Health Care Policies Task Force, comments and information on Long-Term Health Care Insurance Policies.

DATE: We are requesting that comments be forwarded to the address below by December 31, 1986.

ADDRESS: Task Force on Long-Term Health Care Policies Attn.: Dennis DeWitt, Executive Director Room 4406, Health and Human Services North Building 330 Independence Avenue, SW. Washington, DC 20201.

FOR FURTHER INFORMATION CONTACT: Dennis DeWitt, 202–245–0063.

SUPPLEMENTARY INFORMATION:

Purpose

The Task Force on Long-Term Health Care Policies, established under section 9601 of the Consolidated Omnibus Budget Reconciliation Act of 1985 (Pub. L. 99–272), is evaluating current issues relating to private long-term care insurance. To ensure the evolution of sound private long-term care insurance policies and to help foster consumer confidence in them, the Task Force will develop guidelines that can be used by State regulators, persons involved in the insurance industry, and consumers who may wish to purchase such policies.

The term "long-term health care policy" means an insurance policy, or similar health benefits plan, that is designed for or marketed as providing (or making payment for) health care services (such as nursing home care and home health care) or related services (which may include home or community-base services), or both, over an extended period of time.

The Task Force on Long-Term Health Care Policies will advise the Secretary of Health and Human Services and the Administrator of the Health Care Financing Administration concerning the development of insurance policies for long-term care that are privately marketed to individuals or groups. The Task Force will develop recommendations for long-term health care policies, including recommendations designed to—

- Limit marketing and agent abuse of those policies;
- Assure the dissemination of information to consumers necessary to permit informed choice in purchasing the policies and to reduce the purchase of unnecessary or duplicative coverage;
- Assure that benefits provided under the policies are reasonable in relationship to premiums charged; and
- Promote the development and availability of long-term health care policies that meet these recommendations.

Request for Comments

The Task Force requests written public suggestions, comments or statements concerning the development of insurance policies for long-term care that are—

- Privately marketed to individuals or group; and
- Specifically within the purview of, and the recommendations to be made by, the Task Force as outlined above.

(Sec. 10(a)(3) of Pub. L. 92–463, as amended (5 U.S.C. App. I Sec. 1–15))

Dated: October 27, 1986.

William L. Roper,

Administrator, Health Care Financing Administration.

[FR Doc. 86–25011 Filed 11–4–86; 8:45 am]

BILLING CODE 4120–01–M

Social Security Administration

Disability Advisory Council; Meeting

AGENCY: Social Security Administration, HHS.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act (Pub. L. 92–463), this notice announces the schedule and proposed agenda of the first meeting of the Disability Advisory Council (the Council). This notice also describes the purpose, structure, and termination date of the Council.

DATE: General session—November 20, 1986, 10:00 a.m. to 5:00 p.m.

ADDRESS: Department of Health and Human Services, North Auditorium (use "C" Street entrance), 330 Independence Ave. SW., Washington, DC 20201.

FOR FURTHER INFORMATION CONTACT: Douglas Badger, Executive Director, Disability Advisory Council, P.O. Box 17064, Baltimore, Maryland 21203, (301) 594–8177.

SUPPLEMENTARY INFORMATION:

The Council is established and governed by the provisions of section 12102 of Pub. L. 99–272.

The purposes of the Council are to study and make recommendations on the medical and vocational aspects of disability under the Social Security and Supplemental Security Income (SSI) programs. The Council may engage technical assistance in order to carry out its purposes. Studies must include: (1) The effectiveness of vocational rehabilitation programs for Social Security and SSI beneficiaries; (2) the question of using specialists to complete medical and vocational evaluations at the State agency disability decisionmaking level, including the question of requiring medical specialists to complete the medical portion of each case review and any assessment of residual functional capacity in other than mental impairment cases; (3) alternative approaches to work evaluation, the feasibility of providing work evaluation stipends, and screening criteria for work evaluation referrals; and (4) possible criteria for assessing the probability that an applicant or recipient of benefits based on disability will benefit from rehabilitation services.

The Council is to submit a report, specified in Pub. L. 99–272, consisting of the findings and any recommendations to the Secretary of Health and Human Services (the Secretary). The Secretary, in turn, is to submit the report to the Congress and to the Board of Trustees of the Federal Disability Insurance Trust Fund.

The statute provides that the Council terminate after the specified report is submitted to the Congress.

The Secretary has appointed the members of the Council in accordance with the provisions of the statute. This notice announces the first meeting of the Council. The Council is chaired by Dr. John E. Affeldt.

This meeting is open to the public to the extent that space is available. Anyone wishing to submit his or her views and/or questions for consideration by the Council should send them to the Executive Director of the Council at the address shown above.

A transcript of the Council meeting will be made available to the public on an at-cost-of-duplication basis. The transcript can be ordered from the Executive Director of the Council.

The proposed agenda includes briefings on current programs (with an emphasis on disability under the Social Security and SSI programs), an overview of issues the Council must consider, the development of work plans for future Council meetings, and such other business as the chairperson, the Executive Director, or the membership may put before the Council.

Dated: October 31, 1986.

W. Douglas Badger,

Executive Director, Disability Advisory Council.

[FR Doc. 86–25081 Filed 11–4–86; 8:45 am]

BILLING CODE 4190–11–M

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Alaska Land Use Council's Land Use Advisors Committee; Public Invitation

The Federal and State Cochairman of the Alaska Land Use Coucil are soliciting nominations for appointment or reappointment to the Council's Land Use Advisors Committee.

The Land Use Advisors Committee is mandated by section 1201(m) of the Alaska National Interest Lands Conservation Act (ANILCA), Pub. L. 96–487, dated December 2, 1980. The Committee plays a key role in the public participation program established by the Alaska Land Use Council. Among other responsibilities, the Committee makes recommendations to the Council concerning actions of the Federal agencies as they implement the Alaska lands legislation and the Council's annual work program.

The Alaska Lands Act requires that the Land Use Advisors Committee be representative of a balance between State and national interests concerned with the use of federally-owned public lands and resources in Alaska and the several geographic regions of the State. Members of the Committee are appointed jointly by the two Cochairmen and serve without compensation but are reimbursed for necessary travel expenses.

If you are interested in serving on the Alaska Land Use Council's Land Use Advisors Committee, send a letter of interest along with a detailed resume to:

Alaska Land Use Council, Office of the Federal Cochairman, P.O. Box 100120, Anchorage, Alaska 99510–0120, (907) 272–3422, (FTS) 271–5485

Alaska Land Use Council, State Cochairman Designee, Office of Management and Budget, Division of Governmental Coordination, 2600 Denali St, Suite 700, Anchorage, Alaska 99503–2798, (907) 274–3528

The deadline for filing your letter of interest is December 19, 1986. These appointments are for one calendar year, January 1, 1987, through December 31, 1987. For further information, you may write to either of the above addresses or call.

William P. Horn,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 86–24957 Filed 11–4–86; 8:45 am]

BILLING CODE 4310–10–M

[AA–650–06–4121–09]

Notice of Charter Renewal of the Federal-State Coal Advisory Board

AGENCY: Department of the Interior.

ACTION: Notice.

SUMMARY: This notice is published in accordance with section 9(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463). Following consultation with the General Services Administration, notice is hereby given that the Secretary of the Interior (Secretary) is renewing the charter for the Federal-State Coal Advisory Board that was reestablished October 26, 1984. Under the renewed charter the board will continue its role of advising the Secretary on Federal coal leasing matters of a national scope.

DATES: Renewal of the Federal-State Coal Advisory Board Charter will be effective October 26, 1986.

ADDRESSES: Copies of the Federal-State Coal Advisory Board Charter may be obtained from: Director, Bureau of Land Management (650), Department of the Interior, 1800 C Street, NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: John Carlson at the above address; telephone 202/343–4772.

Certification

I hereby certify that the renewal of the Federal-State Coal Advisory Board is necessary and in the public interest in connection with the performance of duties imposed on the Department of the Interior by those statutory authorities listed in 43 CFR 3400.0–3 and by Departmental policy for Federal-State cooperation concerning the Federal coal management program.

Dated: September 22, 1986

Donald Paul Hodel,

Secretary of the Interior.

[FR Doc. 86–24989 Filed 11–4–86; 8:45 am]

BILLING CODE 4310–84–M

Bureau of Land Management

[OR-050-4410: GP7-018]

Prineville District Advisory Council; Meeting

Notice is hereby given in accordance with Pub. L. 92–463 of a meeting of the Prineville District Advisory Council to be held December 12, 1986. The meeting will begin at 10:00 am at the Prineville District BLM Office located at 185 East Fourth Street, Prineville, Oregon.

Agenda items to be discussed by the Council include the Brothers/LaPine Resource Management Plan/ Environmental Impact Statement and public comment dealing with the preliminary issues and alternatives to be analyzed. Other agenda items also include the preparation of the John Day River Management Plan and the update of the District land exchange strategy.

The meeting is open to the public. Anyone wishing to attend and make written or oral comments to the Council should contact the Prineville District Manager at the above address before December 5, 1986.

Dated: October 27, 1986.

Donald L. Smith,

Acting District Manager.

[FR Doc. 86–24958 Filed 11–4–86; 8:45 am]

BILLING CODE 4310-33-M

Bureau of Reclamation

Central South Dakota Water Supply System, Pick-Sloan Missouri Basin Program, South Dakota

AGENCY: Bureau of Reclamation, Interior.

ACTION: Public hearing on draft environmental statement.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, the Department of the Interior has prepared a draft environmental statement for the development of the Central South Dakota Water Supply System (CENDAK) in South Dakota This statement (DES 86–39) was made available to the public on October 2, 1986.

Hearings

Public hearings will be held in Huron and Highmore, South Dakota, on December 2 and 3, 1986, respectively to receive views and comments from interested organizations and individuals relating to the environmental impacts on the proposed project. Hearings will be held at the High School Auditorium in Huron beginning at 7:30 p.m.; at the City Auditorium in Highmore beginning at 7:30 p.m. Speakers will be limited to a period of 15 minutes at the hearing. Speakers will not be allowed to trade their time to obtain a longer presentation; but, the person authorized to conduct the hearing may allow any speaker more time to coment after everyone wishing to comment has been heard. Speakers will be scheduled according to the time preference mentioned in their letter or telephone request whenever possible; speakers not present when called will lose their position in the scheduled order, although their names will be recalled upon completion of the scheduled presentations. Requests for presentation will be accepted up to 4 p.m., November 26, 1986, and any subsequent requests will be handled on a first come, first-serve basis after the scheduled speakers.

Organizations or persons wishing to present statements at the hearing should contact: Regional Environmental Affairs Officer, Bureau of Reclamation, P.O. Box 36900, Billings, MT 59107–6900, Telephone: (406) 657–6558.

Written comments from those unable to attend, and from those wishing to supplement their statements at the hearing should be received by December 19, 1986, so that they can be included in the hearing record.

Dated: October 30, 1986.

C. Dale Duvall,

Commissioner.

[FR Doc. 86–24961 Filed 11–4–86; 8:45 am]

BILLING CODE 4310-09-M

Minerals Management Service

Development Operations Coordination Document, Texaco USA

AGENCY: Minerals Management Service.

ACTION: Notice of the receipt of a proposed development operations coordination document (DOCD).

SUMMARY: Notice is hereby given that Texaco USA has submitted a DOCD describing the activities it proposes to conduct on Lease OCS–G 5041, Block 37, Ship Shoal Area, offshore Louisiana. Proposed plans for the above area provide the development and production of hydrocarbons with support activities to be conducted from onshore bases located at Morgan City and Louisa, Louisiana.

DATE: The subject DOCD was deemed submitted on October 27, 1986. Comments must be received within 15 days of the date of this Notice or 15 days after the Coastal Management Section receives a copy of the plan from the Minerals Management Service.

ADDRESSES: A copy of the subject DOCD is available for public review at the Office of the Regional Director, Gulf of Mexico Region, Minerals Management Service, 1420 South Clearview Pkwy., Room 114, New Orleans, Louisiana (Office Hours: 9 a.m. to 3:30 p.m., Monday through Friday). A copy of the DOCD and the accompanying Consistency Certification are also available for public review at the Coastal Management Section Office located on the 10th Floor of the State Lands and Natural Resources Building, 625 North 4th Street, Baton Rouge, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). The public may submit comments to the Coastal Management Section, Attention OCS Plans. Post Office Box 44487, Baton Rouge, Louisiana 70805.

FOR FURTHER INFORMATION CONTACT: Ms. Angie D. Gobert; Minerals Management Service, Gulf of Mexico OCS Region, Field Operations, Plans, Platform and Pipeline Section; Exploration/Development Plans Unit, Phone (504) 736–2876.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review. Additionally, this Notice is to inform the public, pursuant to § 930.61 of Title 15 of the CFR, that the Coastal Management Section/Louisiana Department of Natural Resources is reviewing the DOCD for consistency with the Louisiana Coastal Resources Program.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected States, executives of affected local governments, and other interested parties became effective December 13, 1979, (44 FR 53685). Those practices and procedures are set out in revised Section 250.34 of Title 30 of the CFR.

Dated: October 27, 1986.

J. Rogers Pearcy,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 86–24959 Filed 11–4–86; 8:45 am]

BILLING CODE 4310-MR-M

National Park Service

Notice of Intention To Negotiate Concession Contract

Pursuant to the provisions of section 5 of the act of October 9, 1965 (79 Stat. 969; 16 U.S.C. 20), public notice is hereby given that sixty (60) days after the date of publication of this notice, the Regional Director of the Pacific Northwest Region of the National Park Service proposes to negotiate a concession contract for continued operation of hotel, restaurant and cave guide services for the public at Oregon Caves National Monument in the state of Oregon. The contract will be for a period ten (10) years from January 1, 1987, through December 31, 1996, and is conditioned upon completion of an improvement program.

The existing concessioner, Oregon Caves Company, has performed its obligations to the satisfaction of the Secretary under a current contract. Therefore, pursuant to the Act of October 9, 1965, the existing concessioner is entitled to be given a preference in the negotiation of a new contract. This preference allows an existing satisfactory concessioner to offer to meet the terms of the best offer made in response to the terms of the Statement of Requirements if that offer is not that of the existing satisfactory concessioner.

For a copy of the Statement of Requirements describing the opportunity offered and including the application requirements, interested parties should write to the Superintendent, Crater Lake National Park, P.O. Box 7, Crater Lake, Oregon 97604 (Administrative Headquarters for Oregon Caves National Monument) or call Mr. Phil Parker, Concession Analyst, 206–442–5193.

The Secretary will consider and evaluate all proposals timely received. Any proposal, including that of the existing concessioner, must be postmarked or hand delivered on or before the sixtieth (60th) day following publication of this notice to be considered and evaluated.

This contract action has been determined to be categorically excluded from the procedural provisions of the National Environmental Policy Act and no environmental document will be prepared.

Dated: October 10, 1986.

William J. Briggle,

Acting Regional Director, Pacific Northwest Region.

[FR Doc. 86–24960 Filed 11–4–86; 8:45 am]

BILLING CODE 4310–70–M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–243]

Luggage Products; Receipt of Initial Determination Terminating Respondent on the Basis of Consent Order Agreement

AGENCY: U.S. International Trade Commission.

ACTION: Notice is hereby given that the Commission has received an initial determination from the presiding officer in the above-captioned investigation terminating the following respondent on the basis of a consent order agreement: Dimensions Unlimited (Dimensions).

SUPPLEMENTARY INFORMATION: This investigation is being conducted pursuant to section 337 of the Tariff Act of 1930 (19 U.S.C. 1337). Under the Commission's rules, the presiding officer's initial determination will become the determination of the Commission thirty (30) days after the date of its service upon the parties, unless the Commission orders review of the initial determination. The initial determination in this matter was served upon the parties on October 29, 1986.

Copies of the initial determination, the consent order agreement, and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:14 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, DC 20436, telephone 202–523–0161. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–724–0002.

Written Comments: Interested persons may file written comments with the Commission concerning termination of the aforementioned respondent. The original and 14 copies of all such comments must be filed with the Secretary to the Commission, 701 E Street NW., Washington, DC 20436, no later than 10 days after publication of this notice in the **Federal Register**. Any person desiring to submit a document (or portion thereof) to the Commission in confidence must request confidential treatment. Such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why confidential treatment should be granted. The Commission will either accept the submission in confidence or return it.

FOR FURTHER INFORMATION CONTACT: Ruby J. Dionne, Office of the Secretary, U.S. International Trade Commission, telephone 202–523–0176.

By order of the Commission.

Issued: October 29, 1986.

Kenneth R. Mason,

Secretary.

[FR Doc. 86–25034 Filed 11–4—86; 8:45 am]

BILLING CODE 7020–02–M

[Investigation No. 337–TA–243]

Luggage Products; Initial Determination Terminating Respondent on the Basis of Settlement Agreement

AGENCY: U.S. International Trade Commission.

ACTION: Notice is hereby given that the Commission has received an initial determination from the presiding officer in the above-captioned investigation terminating the following respondent on the basis of a settlement agreement: Winn International Corporation (Winn).

SUPPLEMENTARY INFORMATION: This investigation is being conducted pursuant to section 337 of the Tariff Act of 1930 (19 U.S.C. § 1337). Under the Commission's rules, the presiding officer's initial determination will become the determination of the Commission thirty (30) days after the date of its service upon the parties, unless the Commission orders review of the initial determination. The initial determination in this matter was served upon the parties on October 29, 1986.

Copies of the initial determination, the settlement agreement, and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, DC 20436, telephone 202–523–0161. Hearing impaired individuals are advised that information on this matter can be

obtained by contacting the Commission's TDD terminal on 202–724–0002.

Written Comments: Interested persons may file written comments with the Commission concerning termination of the aforementioned respondent. The original and 14 copies of all such comments must be filed with the Secretary to the Commission, 701 E Street NW., Washington, DC 20436, no later than 10 days after publication of this notice in the **Federal Register**. Any person desiring to submit a document (or portion thereof) to the Commission in confidence must request confidential treatment. Such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why confidential treatment should be granted. The Commission will either accept the submission in confidence or return it.

FOR FURTHER INFORMATION CONTACT: Ruby J. Dionne, Office of the Secretary, U.S. International Trade Commission, telephone 202–523–0176.

By order of the Commission.

Issued: October 29, 1986.

Kenneth R. Mason,

Secretary.

[FR Doc. 86–25035 Filed 11–4–86; 8:45 am]

BILLING CODE 7020–02–M

[Investigation No. 337–TA–243]

Luggage Products; Receipt of Initial Determination Terminating Respondent on the Basis of Consent Order Agreement

AGENCY: U.S. International Trade Commission.

ACTION: Notice is hereby given that the Commission has received an initial determination from the presiding officer in the above-captioned investigation terminating the following respondent on the basis of a consent order agreement: Montgomery Ward & Co. (Montgomery Ward).

SUPPLEMENTARY INFORMATION: This investigation is being conducted pursuant to section 337 of the Tariff Act of 1930 (19 U.S.C. 1337). Under the Commission's rules, the presiding officer's initial determination will become the determination of the Commission thirty (30) days after the date of its service upon the parties, unless the Commission orders review of the initial determination. The initial determination in this matter was served upon the parties on October 29, 1986.

Copies of the initial determination, the consent order agreement, and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, DC 20436, telephone 202–523–0161. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–724–0002.

Written Comments: Interested persons may file written comments with the Commission concerning termination of the aforementioned respondent. The original and 14 copies of all such comments must be filed with the Secretary to the Commission, 701 E Street NW., Washington, DC 20436, no later than 10 days after publication of this notice in the **Federal Register**. Any person desiring to submit a document (or portion thereof) to the Commission in confidence must request confidential treatment. Such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why confidential treatment should be granted. The Commission will either accept the submission in confidence or return it.

FOR FURTHER INFORMATION CONTACT: Ruby J. Dionne, Office of the Secretary, U.S. International Trade Commission, telephone 202–523–0176.

By order of the Commission.

Issued: October 29, 1986.

Kenneth R. Mason,

Secretary.

[FR Doc. 86–25036 Filed 11–4–86; 8:45 am]

BILLING CODE 7020–02–M

[Investigation No. 337–TA–258]

Moldable/Extrudable Polyethersteramide Copolymers; Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Institution of investigation pursuant to 19 U.S.C. 1337.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on September 25, 1986, pursuant to section 337 of the Tariff Act of 1930 (19 U.S.C. 1337), on behalf of Atochem, Inc., 266 Harristown Road, Post Office Box 607, Glen Rock, New Jersey 07452. Two supplements to the complaint were filed on October 14, 1986. The complaint as supplemented alleges unfair methods of competition and unfair acts in the importation of certain moldable/extrudable polyetheresteramide copolymers into the United States, and in their sale by reason of alleged (1) infringement of at least claims 1–3, 5–7, 15, and 17–18 of U.S. Letters Patent 4,331,786; and (2) infringement of at least claims 1–4 and 6–11 of U.S. Letters Patent 4,332,920. The complaint further alleges that the effect or tendency of the unfair methods of competition and unfair acts is to destroy or substantially injure an industry, efficiently and economically operated, in the United States.

The complainant requests that the Commission institute an investigation and, after a full investigation, issue a permanent exclusion order and permanent cease and desist orders.

FOR FURTHER INFORMATION CONTACT: T. Spence Chubb, Esq., or Stephen S. Sulzer, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, telephone 202–523–0397 and 202–523–0419.

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930 and in § 210.12 of the Commission's Rules of Practice and Procedure (19 CFR 210.12).

Scope of Investigation: Having considered the complaint, the U.S. International Trade Commission, on October 23, 1986, ordered that—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, an investigation be instituted to determine whether there is a violation of subsection (a) of section 337 in the unlawful importation of certain moldable/extrudable polyetheresteramide copolymers into the United States, or in their sale, by reason of alleged (1) infringement of claims, 1–3, 5–7, 15, and 17–18 of U.S. Letters Patent 4,331,786; and (2) infringement of claims 1–4 and 6–11 of U.S. Letters Patent 4,332,920, the effect or tendency of which is to destroy or substantially injure an industry, efficiently and economically operated, in the United States;

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is—Atochem, Inc., 266 Harristown Road, Post Office Box 607, Glen Rock, New Jersey 07452.

(b) The respondents are the following companies, alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

Huls AG, Lipper Weg 20, 4370, Marl 1, Federal Republic of Germany

Huels Corporation, 750 Third Avenue, New York, New York 10017
Nuodex, Inc., Turner Place, Post Office Box 365, Piscataway, New Jersey 08854.

(c) T. Spence Chubb, Esq., and Stephen S. Sulzer, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, 701 E Street N.W., Room 126 and Room 124, respectively, Washington, DC 20436, shall be the Commission investigative attorneys, party to this investigation; and

(3) For the investigation so instituted, Janet D. Saxon, Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding administrative law judge.

Responses must be submitted by the named respondents in accordance with § 210.21 of the Commission's Rules of Practice and Procedure (19 CFR 210.21). Pursuant to §§ 201.16(d) and 210.21(a) of the rules (19 CFR 201.16(d) and 210.21(a)), such responses will be considered by the Commission if received not later than 20 days after the date of service of the complaint. Extensions of time for submitting a response will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter both an initial determination and a final determination containing such findings.

The complaint, except for any confidential information contained therein, is available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Room 156, Washington, DC 20436, telephone 202–523–0471. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–724–0001.

By order of the commission

Issued: October 27, 1986.

Kenneth R. Mason,

Secretary.

[FR Doc. 86–25037 Filed 11–4–86; 8:45 am]

BILLING CODE 7020–02–M

[Investigation No. 337–TA–229]

Nut Jewelry and Parts; Issuance of General Exclusion Order, Four Cease and Desist Orders, and Two Consent Orders

AGENCY: U.S. International Trade Commission.

ACTION: Determination of violation of section 337 of the Tariff Act of 1930 and issuance of a general exclusion order, four cease and desist orders, and two consent orders.

SUMMARY: The Commission has determined that a general exclusion order and cease and desist orders directed to respondents R. Baird & Co., Liven & Co., Pong Lai Coral Development Co., Ltd., and Ali Baba Import & Export pursuant to sections 337 (d) and (f) of the Tariff Act of 1930 (19 U.S.C. 1337(d) and (f)) are the appropriate remedies for violations of section 337 found to exist; that the public interest considerations enumerated in section 337 (d) and (f) do not preclude such relief; and that the amount of the bond during the Presidential review period under section 337(g) shall be 157 percent of the entered value of the imported articles. The Commission has also determined to issue consent orders terminating the investigation as to respondents Blair, Ltd. and RDCO, Inc. Termination of the investigation as to respondents Blair, Ltd. and RDCO, Inc. based on consent orders furthers the public interest by conserving Commission resources and those of the parties involved.

FOR FURTHER INFORMATION CONTACT: Randi S. Field, Esq., Office of the General Counsel, U.S. International Trade Commission , telephone 202–523–0261.

SUPPLEMENTARY INFORMATION: On July 30, 1986, the presiding administrative law judge (ALJ) issued an initial determination (ID) finding that there is a violation of section 337 in the unauthorized importation and domestic sale of certain nut jewelry and parts thereof by reason of inadequate designation of country of origin when the jewelry is sold with certain labels, with the effect or tandency to destroy or substantially injure an efficiently and economically operated industry in the United States. On September 22, 1986, the Commission determined to review the ALJ's ID on the definition of the domestic industry and his determination in the ID denying the joint motions of Blair and RDCO to terminate the investigation as to them on the basis of consent orders. 51 FR 33935 (September 24, 1986). The Commission requested briefs on the issues under review and on the issues of remedy, the public interest, and bonding. Submissions were received from complainant Kukui Nuts of Hawaii, Inc, respondents Blair, Ltd., and RDCO, Inc., the Commission investigative attorney, and the U.S. Customs Service. No submissions from the public have been received.

This action is taken under the authority of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) and §§ 210.54–210.56 of the Commission's Rules of Practice and Procedure (19 CFR 210.54–.56).

Notice of this investigation was published in the *Federal Register* on October 30, 1985 (50 FR 45173).

Copies of the nonconfidential version of the ALJ's ID and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, DC 20436, telephone 202–523–0161. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–724–0002.

By order of the Commission.

Issued: October 31, 1986.

Kenneth R. Mason,

Secretary.

[FR Doc. 86–25038 Filed 11–4–86; 8:45 am]

BILLING CODE 7020–02–M

[Investigations Nos. 731–TA–356 through 363 [Preliminary]]

Portland Hydraulic Cement and Cement Clinker from Colombia, France, Greece, Japan, Mexico, the Republic of Korea, Spain, and Venezuela; Import Investigations

AGENCY: United States International Trade Commission.

ACTION: Institution of preliminary antidumping investigations and scheduling of a conference to be held in connection with the investigation.

SUMMARY: The Commission hereby gives notice of the institution of preliminary antidumping investigations Nos. 731–TA–356 through 363 (Preliminary) under section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)) to determine whether there is a reasonable indication that an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is

materially retarded, by reason of imports from Colombia (inv. No 731–TA–356 (Preliminary)), France (inv. No. 731–TA–357 (Preliminary)), Greece (inv. No. 731–TA–358 (Preliminary)), Japan (inv. No. 731–TA–359 (Preliminary)), Mexico (inv. No. 731–TA–360 (Preliminary)), the Republic of Korea (inv. No. 731–TA–361 (Preliminary)), Spain (inv. No. 731–TA–362 (Preliminary)), and Venezuela (inv. No. 731–TA–363 (Preliminary)) of Portland hydraulic cement and cement clinker, [1] provided for in item 511.14 of the Tariff Schedules of the United States (TSUS), which are alleged to be sold in the United States at less than fair value. As provided in section 733(a), the Commission must complete preliminary antidumping investigations in 45 days, or in these cases by December 15, 1986.

For further information concerning the conduct of these investigations and rules of general applications, consult the Commission's Rules of Practice and Procedure, part 207, subparts A and B (19 CFR part 207), and part 201, subparts A through E (19 CFR part 201).

EFFECTIVE DATE: October 30, 1986.

FOR FURTHER INFORMATION CONTACT: Tedford Briggs (202–523–4612), Office of Investigations, U.S. International Trade Commission, 701 E Street NW., Washington, DC 20436. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–724–0002.

SUPPLEMENTARY INFORMATION:

Background

These investigations are being instituted in reponse to a petition filed on October 30, 1986, by counsel on behalf of members of the American Cement Trade Alliance.

Participation in the investigations.

Persons wishing to participate in these investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11 of the Commission's rules (19 CFR 201.11), not later than seven (7) days after publication of this notice in the **Federal Register**. Any entry of appearance filed after this date will be referred to the Chairman, who will determine whether to accept the late entry for good cause shown by the person desiring to file the entry.

[1] These investigations do not include white, nonstaining Portland hydralic cement, providing for in TSUS item 511.11, or oil well cement, provided for in TSUS item 511.14.

Service list

Pursuant to § 201.11(d) of the Commission's rules (19 CFR 201.11(d)), the Secretary will provide a service list containing the names and addresses of all persons, or their representatives, who are parties to these investigations upon the expiration of the period for filing entries of appearance. In accordance with §§ 201.16(c) and 207.3 of the rules (19 CFR 201./16(c) and 207.3), each document filed by a party to the investigations must be served on all other parties to the investigations (as identified by the service list) and a certificate of service must accompany the document. The Secretary will not accept a document for filing without a certificate of service.

Conference

The Director of Operations of the Commission has scheduled a conference in connection with these investigations for 9:30 a.m. on November 21, 1986, at the U.S. International Trade Commission Building, 701 E Street NW., Washington, DC. Parties wishing to participate in the conference should contact Tedford Briggs (202–523–4612) not later than November 17, 1986, to arrange for their appearance. Parties in support of the imposition of antidumping duties in these investigations and parties in opposition to the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conference.

Written submissions

Any person may submit to the Commission on or before November 25, 1986, a written statement of information pertinent to the subject of the investigations, as provided in § 207.15 of the Commission's rules (19 CFR 207.15). A signed original and fourteen (14) copies of each submission must be filed with the Secretary to the Commission in accordance with § 201.8 of the rules (19 CFR 201.8). All written submissions except for confidential business data will be available for public inspection during regular business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary of the Commission.

Any business information for which confidential treatment is desired must be submitted separately. The envelope and all pages of such submissions must be clearly labeled "Confidential Business Information." Confidential submissions and requests for confidential treatment must conform with the requirements of § 201.6 of the Commission's rules (19 CFR 201.6).

Authority

These investigations are being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to § 207.12 of the Commission's rules (19 CFR 207.12).

By order of the Commission.

Issued: October 31, 1986.

Kenneth R. Mason,

Secretary.

[FR Doc. 86–25039 Filed 11–4–86; 8:45 am]

BILLING CODE 7020–02–M

[Investigation No. 731–TA–355 (Preliminary)]

Certain Silica Filament Fabric From Japan; Import Investigations

AGENCY: United States International Trade Commission.

ACTION: Institution of a preliminary antidumping investigation and scheduling of a conference to be held in connection with the investigation.

SUMMARY: The Commission hereby gives notice of the institution of preliminary antidumping investigation No. 731–TA–355 (Preliminary) under section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673(a)) to determine whether there is a reasonable indication that an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Japan of woven fabrics, of glass (silica filaments), whether or not colored, containing not over 17 percent of wool by weight, provided for in items 338.25 and 338.27 of the Tariff Schedules of the United States, which are alleged to be sold in the United States at less than fair value. As provided in section 733(a), the Commission must complete preliminary antidumping investigations in 45 days, or in this case by December 11, 1986.

For further information concerning the conduct of this investigation and rules of general application, consult the Commission's Rules of Practice and Procedure, part 207, subparts A and B (19 CFR part 207), and part 201, subparts A through E (19 CFR part 201).

EFFECTIVE DATE: October 27, 1986.

FOR FURTHER INFORMATION CONTACT: Stephen Vastagh (202–523–0283), Office of Investigations, U.S. International Trade Commission, 701 E Street NW., Washington, DC 20436. Hearing-impaired individuals may obtain information on this matter by contacting the Commission's TDD terminal on 202–724–0002. Information may also be obtained via electronic mail by

accessing the Office of Investigations' remote bulletin board system for personal computers at 202–523–0103.

SUPPLEMENTARY INFORMATION:

Background.

This investigation is being instituted in response to a petition filed on October 27, 1986, by counsel on behalf of Ametek, Inc. (Haveg Division), of Wilmington, DE, and HITCO of Newport Beach, CA.

Participation in the investigation.

Persons wishing to participate in this investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11 of the Commission's rules (19 CFR 201.11), not later than seven (7) days after publication of this notice in the **Federal Register**. Any entry of appearance filed after this date will be referred to the Chairman, who will determine whether to accept the late entry for good cause shown by the person desiring to file the entry.

Service list.

Pursuant to § 201.11(d) of the Commission's rules (19 CFR 201.11(d)), the Secretary will prepare a service list containing the names and addresses of all persons, or their representatives, who are parties to this investigation upon the expiration of the period for filing entries of appearance. In accordance with §§ 201.16(c) and 207.3 of the rules (19 CFR 201.16(c) and 207.3), each document filed by a party to the investigation must be served on all other parties to the investigation (as identified by the service list), and a document for filing without a certificate of service.

Conference.

The Director of Operations of the Commission has scheduled a conference in connection with this investigation for 9:30 a.m. on November 19, 1986, at the U.S. International Trade Commission Building, 701 E Street NW., Washington, DC. Parties wishing to participate in the conference should contact Stephen Vastagh (202–523–0283) not later than November 13, 1986, to arrange for their appearance. Parties in support of the imposition of antidumping duties in this investigation and parties in opposition to the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conference.

Written submissions.

Any person may submit to the Commission on or before November 21, 1986, a written statement of information pertinent to the subject of the investigation, as provided in § 207.15 of the Commission's rules (19 CFR 207.15). A signed original and fourteen (14) copies of each submission must be filed with the Secretary to the Commission in accordance with § 201.8 of the rules (19 CFR 201.8). All written submissions except for confidential business data will be available for public inspection during regular business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary to the Commission.

Any business information for which confidential treatment is desired must be submitted separately. The envelope and all pages of such submissions must be clearly labeled "Confidential Business Information." Confidential submissions and requests for confidential treatment must conform with the requirements of § 201.6 of the Commission's rules (19 CFR 201.6).

Authority. This investigation is being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to section 207.12 of the Commission's rule (19 CFR § 207.12).

By order of the Commission.

Issued: October 31, 1986.

Kenneth R. Mason,

Secretary.

[FR Doc. 86–25040 Filed 11–4–86; 8:45 am]

BILLING CODE 7020–02–M

[Investigation No. 701–TA–274 (Final)]

Softwood Lumber From Canada; Import Investigations

AGENCY: United States International Trade Commission.

ACTION: Institution of a final countervailing duty investigation and scheduling of a hearing to be held in connection with the investigation.

SUMMARY: The Commission hereby gives notice of the institution of final countervailing duty investigation No. 701–TA–274 (Final) under section 705(b) of the Tariff Act of 1930 (19 U.S.C. 1671d(b)) to determine whether an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Canada of softwood lumber, rough, dressed, or worked (including softwood flooring classified as lumber), provided for in items 202.03 through 202.30, inclusive; softwood siding, not drilled or treated, provided for in items 202.47 through 202.50, inclusive; other softwood lumber and siding, provided for in items 202.52 and 202.54 and softwood flooring provided for in item 202.60 of the Tariff Schedules of the United States, which have been found by the Department of Commerce, in a preliminary determination, to be subsidized by the Government of Canada. Commerce will make its final subsidy determination in this investigation on or before December 30, 1986 and the Commission will make its final injury determination by February 17, 1987 (see section 705(a) and 705(b) of the Act (19 U.S.C. 1671d(a) and 1671d(b))).

For further information concerning the conduct of this investigation, hearing procedures, and rules of general application, consult the Commision's Rules of Practice and Procedure, part 207, subparts A and C (19 CFR part 207), and part 201, subparts A through E (19 CFR part 201).

EFFECTIVE DATE: October 22, 1986.

FOR FURTHER INFORMATION CONTACT: Jim McClure (202–523–1793), Office of Investigations, U.S. International Trade Commission, 701 E. Street NW., Washington, DC 20436. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–724–0002.

SUPPLEMENTARY INFORMATION:

Background.

This investigation is being instituted as a result of an affirmative preliminary determination by the Department of Commerce that certain benefits which constitute subsidies within the meaning of section 701 of the act (19 U.S.C. 1671) are being provided to mamufacturers, producers, or exporters in Canada of softwood lumber. The investigation was requested in a petition filed on May 19, 1986 by the Coalition for Fair Lumber Imports, a group of U.S. softwood lumber manufacturers and associations representing U.S. softwood lumber manufacturers and foresters. In response to that petition the Commission conducted a preliminary countervailing duty investigation and, on the basis of information developed during the course of that investigation, determined that there was a reasonable indication that an industry in the United States was materially injured by reason of imports of the subject merchandise (51 FR 25752, July 16, 1986).

Participation in the investigation.

Persons wishing to participate in this investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11 of the Commission's rules (19 CFR 201.11), not later than twenty-one

(21) days after the publication of htis notice in the **Federal Register.** Any entry of appearance filed after this date will be referred to the Chairman, who will determine whether to accept the late entry for good cause shown by the person desiring to file the entry.

Service list.

Pursuant to § 201.11(d) of the Commission's rules (19 CFR 201.11(d)), the Secretary will prepare a service list containing the names and addresses of all persons, or their representatives, who are parties to this investigation upon the expiration of the period for filing entries of appearance. In accordance with §§ 201.16(c) and 207.3 of the rules (19 CFR 201.16(c) and 207.3), each document filed by a party to the investigation must be served on all other parties to the investigation (as identified by the service list), and a certificate of service must accompany the document. The Secretary will not accept a document for filing without a certificate of service.

Staff report

A public version of the prehearing staff report in this investigation will be placed in the public record on December 23, 1986, pursuant to § 207.21 of the Commission's rules (19 CFR 207.21).

Hearing

The Commission will hold a hearing in connection with this investigation beginning at 9:30 a.m. on January 15, 1987, at the U.S. International Trade Commission Building, 701 E Street NW., Washington, DC. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission not later than the close of business (5:15 p.m.) on January 2, 1987. All persons desiring to appear at the hearing and make oral presentations should file prehearing briefs and attend a prehearing conference to be held at 9:30 a.m. on January 6, 1987, in room 117 of the U.S. International Trade Commission Building. The deadline for filing prehearing briefs is January 8, 1987.

Testimony at the public hearing is governed by § 207.23 of the Commission's rules (19 CFR 207.23). This rule requires that testimony be limited to a nonconfidential summary and analylsis of material contained in prehearing briefs and to information not available at the time the prehearing brief was submitted. Any written materials submitted at the hearings must be filed in accordance with the procedures described below and any confidential materials must be submitted at least three (3) working days prior to the hearing (see 201.6(b)(2) of the Commission's rules (19 CFR 201.6(b)(2))).

Written submissions.

All legal arguments, economic analyses, and factual materials relevant to the public hearing should be included in prehearing briefs in accordance with § 207.22 of the Commission's rules (19 CFR 207.22). Posthearing briefs must conform with the provisions of § 207.24 (19 CFR 207.24) and must be submitted not later than the close of business on January 22, 1987. In addition, any person who has not entered an appearance as a party to the investigation may submit a written statement of information pertinent to the subject of the investigation on or before January 22, 1987.

A signed original and fourteen (14) copies of each submission must be filed with the Secretary to the Commission in accordance with § 201.8 of the Commission's rules (19 CFR 208). All written submissions except for confidential business data will be available for public inspection during regular business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary to the Commission.

Any business information for which confidential treatment is desired must be submitted separately. The envelope and all pages of such submissions must be clearly labeled "Confidential Business Information." Confidential submissions and requests for confidential treatment must conform with the requirements of § 201.6 of the Commission's rules (19 CFR 201.6).

Authority: This investigation is being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to § 207.20 of the Commission's rules (19 CFR 207.20).

By order of the Commission.

Issued: October 30, 1986.

Kenneth R. Mason,

Secretary.

[FR Doc. 86-25041 Filed 11-4-86; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-230]

Certain Unitary Electromagnetic Flowmeters With Sealed Coils; Import Investigations

AGENCY: U.S. International Trade Commission.

ACTION: Determination of no violation of section 337 of the Tariff Act of 1930, 19 U.S.C. 1337, in the above-captioned investigation.

SUMMARY: The Commission has determined to reverse those parts of the initial determination (ID) of the administrative law judge (ALJ) finding an effect of substantial injury and a tendency to substantially injure the domestic industry in the above-captioned investigation. The investigation is therefore terminated on the basis that there is no violation of section 337.

FOR FURTHER INFORMATION CONTACT: Jean A. Heck, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202-523-1693.

SUPPLEMENTARY INFORMATION: On September 24, 1985, Fischer & Porter Co. filed a complaint under section 337. On October 21, 1985, the Commission instituted an investigation to determine whether there is a violation of section 337 in the unlawful important or sale of certain electromagnetic flowmeters with sealed coils into the United States by reason of alleged infringement of claims 1, 2, 3, 4, and 5 of U.S. Letters Patent 4,420,982, the effect or tendency of which is to destroy or substantially injure an industry, efficiently and economically operated, in the United States. The Commission named Krohne Messtechnik GmbH & Co. of the Federal Republic of Germany and Krohne-America, Inc., of Peabody, Massachusetts, as respondents.

On July 30, 1986, the ALJ issued an ID finding a violation of section 337. On September 15, 1986, the Commission determined to review the effect of substantial injury and tendency to substantially injure portions of the ID (51 FR 33933). All parties submitted briefs of all issues under review and on remedy the public interest, and bonding. No other submissions were received.

The authority for the Commission's disposition of this matter is contained in section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) and in § 210.56 of the Commission's Rules of Practice and Procedure (49 FR 46123) (19 CFR 210.56).

Copies of the Commission's Action and Order and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, DC 20436, telephone 202-523-0161. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission TDD terminal on 202-724-0002.

By order of the Commission.

Kenneth R. Mason,

Secretary.

Issued: October 30, 1986.

[FR Doc. 86-25042 Filed 11-04-86; 8:45 am]

BILLING CODE 7020-02-M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

Reimbursable Services; Excess Cost of Preclearance Operations

Notice is hereby given that pursuant to Immigration and Naturalization Service Regulations (8 CFR 235.5(c)), the biweekly reimbursable excess costs for each preclearance installation are determined as set forth below and will be effective with the pay period beginning October 26, 1986.

Installation	Biweekly excess cost
Montreal, Canada	$11,221.32
Toronto, Canada	16,158.03
Kindley Field, Bermuda	2,396.82
Freeport, Banama Islands	6,532.27
Nassau, Banama Islands	7,504.98
Calgary, Canada	4,630.41
Edmonton, Canada	2,192.73
Vancouver, Canada	8,968.91
Victoria, Canada	5,597.99
Winnipeg, Canada	1,791.64

These amounts will be in effect and billed biweekly through November 29, 1986.

Dated: October 30, 1986.

Malcolm E. Arnold,

Comptroller.

[FR Doc. 86-24963 Filed 11-4-86; 8:45 am]

BILLING CODE 4410-10-M

Office of Juvenile Justice and Delinquency Prevention

Change of Proposal Submission Date for Research on Effects of Deinstitutionalization of Status Offenders

AGENCY: Office of Juvenile Justice and Delinquency Prevention.

ACTION: Notice of change of proposal submission date.

SUMMARY: Notice of change of proposal submission date for grant applications under OJJDP's Research on Effects of the Deinstitutionalization of Status Offenders program.

SUPPLEMENTARY INFORMATION: This notice announces a change in Section VIII of **Federal Register** Vol. 51, No. 174, Tuesday, September 9, 1986, Pages 32184–32187 (Part III). Section VIII, paragraph 4 of the program announcement specified the following application submission date: "applications must be received by mail or hand delivered to the NIJJDP/OJJDP by 5:30 p.m. EST on November 15, 1986." Since November 15, 1986 falls on a Saturday a new submission date has been established. The new submission date will be Tuesday, November 18, 1986. Applications must be received by mail or hand delivered to the NIJJDP/OJJDP by 5:30 p.m. EST on November 18, 1986.

DATES: Effective November 5, 1986.

FOR FURTHER INFORMATION CONTACT: Richard Sutton, Research and Program Development Division, NIJJDP/OJJDP, 633 Indiana Ave. NW., Room 778, Washington, DC 20531, Telephone: (202) 724–5929.

Verne L. Speirs,

Acting Administrator, Office of Juvenile Justice and Delinquency Prevention.

[FR Doc. 86-24975 Filed 11-4-86; 8:45 am]

BILLING CODE 4410-18-M

NUCLEAR REGULATORY COMMISSION

Applications and Amendments to Operating Licenses Involving No Significant Hazards Considerations; Bi-Weekly Notice

I. Background

Pursuant to Public Law (Pub. L.) 97–415, the Nuclear Regulatory Commission (the Commission) is publishing this regular bi-weekly notice. Pub. L. 97–415 revised section 189 of the Atomic Energy Act of 1954, as amended (the Act), to require the Commission to publish notice of any amendments issued, or proposed to be issued, under a new provision of section 189 of the Act. This provision grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This bi-weekly notice includes all amendments issued, or proposed to be issued, since the date of publication of the last bi-weekly notice which was published on October 22, 1986 (51 FR 37502) through October 27, 1986.

NOTICE OF CONSIDERATION OF ISSUANCE OF AMENDMENT TO FACILITY OPERATING LICENSE AND PROPOSED NO SIGNIFICANT HAZARDS CONSIDERATION DETERMINATION AND OPPORTUNITY FOR HEARING

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendments would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Comments should be addressed to the Rules and Procedures Branch, Division of Rules and Records, Office of Administration, U. S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this **Federal Register** notice.

By December 5, 1986, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFP 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment. and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment. If the final determination is that the amendment involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way.would result, for example, in derating or shutdown of the facility. The Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received before action is taken. Should the Commission take this action, it will publish a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at (800) 325–6000 (in Missouri (800) 342–6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to *(Project Director)*: petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of General Counsel, Bethesda, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board, that the petition and/or request should be granted based upon a balancing of factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's Public Document Room, 1717 H Street, N.W., Washington, D.C., and at the local public document room for the particular facility involved.

Arizona Public Service Company et al, Docket Nos. STN 50–528 and 50–529, Palo Verde Nuclear Generating Station (PVNGS), Units 1 and 2, Maricopa County, Arizona

Date of amendment requests: October 16, 1986 (three applications)

Description of amendment requests: The proposed amendments would allow additional sale and leaseback transactions by Arizona Public Service Company (APS), Public Service Company of New Mexico (PNM) and El Paso Electric Company (El Paso) relating to their ownership interests in Palo Verde. Specifically, the three applications request authorization by three of the co-owners to transfer all or a portion of their remaining fee interests to equity investors and the simultaneous transfer by the equity investors back to these co-owners of a long term (approximately 27½–29½ years) possessory leasehold interest of these shares under the terms described in the applications and other identified documents. (For PNM, the sale and leaseback transactions relate to Palo Verde 1 and 2; for APS and El Paso, the sale and leaseback transactions relate to Palo Verde 2.).

It is comtemplated that the equity investors may be third parties not affiliated with the co-owners. These equity investors might include electric utilities, or affiliates or subsidiaries thereof, in which case antitrust considerations may be present. Under the proposed transactions, it is represented that the present co-owners will remain in possession of their present partial interests in the Palo Verde facilities under leaseholds rather than by virtue of ownership. APS would continue to be the sole licensed operator of the facilities.

The proposed amendments are similar to a request filed on October 18, 1985, by Arizona Public Service Company (APS) regarding the sale and leaseback transactions by Public Service Company of New Mexico (PNM) of a portion of PNM's ownership interests in PVNGS Unit 1. See 50 FR 45955. By Order of December 12, 1985, the Commission approved the proposed sale and leaseback transactions and authorized the amendment of the PVNGS Unit 1 license subject to certain conditions. On December 26, 1985, the PVNGS Unit 1 license was amended and conditioned pursuant to the Commission's Order. See 51 FR 1883.

The Commission also received requests for additional similar transactions related to sale and leaseback of Palo Verde Units 1 and 2 ownership shares by PNM (see 51 FR 8259, 51 FR 8587, and 51 FR 9125) and requests for similar transactions related to sale and leaseback of Palo Verde Unit 2 ownership shares by El Paso Electric Company (see 51 FR 20366) and by Arizona Public Service Company (see 51 FR 20367). On June 2, August 12 and 15, 1986, the PVNGS Units 1 and 2 licenses were amended to allow the requested sale and leaseback transactions. These amendments permitted the transactions to be completed by PNM for Unit 1 by August 31, 1986 and by PNM, APS and El Paso for Unit 2 by September 30, 1986.

The current applications state that, although the co-owners have sold and leased back portions of the ownership interests authorized by the license amendments, additional amendments are requested to allow the sale and leaseback transactions of the remainder of their ownership interests. They anticipate these transactions will be completed by June 30, 1987.

In addition, co-owner Public Service Company of New Mexico has requested that Paragraph 2.B(6) of the Unit 1 license be revised to change the language concerning insurance to make it consistent with the language of the Unit 2 license. Specifically, in lieu of the statement that the licensees notify the Commission of "any change in the existing insurance", it should be changed to "any change in . . . the existing property insurance coverage for the Palo Verde Nuclear Facility, Unit 1 as specified in licensees counsel's letter of November 26, 1985".

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92. A proposed amendment to an operating license for a facility involves no significant hazards considerations if operation of the facility in accordance with a proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

A discussion of these standards as they relate to the amendment requests follows:

Standard 1—Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated

No change is involved in any aspect of plant design, criteria or operation of any of the plant units. The proposed amendments do not, therefore, significantly increase the probability or consequences of an accident.

Standard 2—Create the Possibility of a New or Different Kind of Accident From Any Accident Previously Evaluated

The proposed amendments do not affect any aspect of plant design, criteria or operation and do not affect any condition or parameter of any unit. For this reason, the NRC staff has determined that the proposed amendments do not create the possibility of a new or different kind of accident from any accident previously evaluated.

Standard 3—Involve a Significant Reduction in a Margin of Safety

The requested amendments do not change any aspect of plant design, criteria or operation of any of the plant units. For this reason, the NRC staff has determined that the proposed changes do not involve a significant reduction in any margins of safety.

The proposed amendments would authorize additional time to complete sale and leaseback transactions of a kind previously authorized by the Commission and clarify a condition concerning Unit 1 property insurance to reflect that which has been approved for Unit 2. Furthermore, the proposed amendments would maintain the co-owners in possession of their present interests in PVNGS as lessees and they would continue to be obligated to pay their share of all costs of construction, maintenance, operation, capital improvements and decommissioning. The equity investors do not have any rights of possession in, absent further license amendment, or control over PVNGS. Arizona Public Service Company would continue to be the sole licensee authorized to use and operate the facility.

Based on the above considerations, the Commission proposes to determine that the proposed changes do not involve a significant hazards consideration.

Local Public Document Room Location: Phoenix Public Library, Business, Science and Technology Department, 12 East McDowell Road, Phoenix, Arizona 85004.

Attorney for licensees: Mr. Arthur C. Gehr, Snell & Wilmer, 3100 Valley Center, Phoenix, Arizona 85007.

NRC Project Director: George W. Knighton.

Commonwealth Edison Company, Docket No. 50–373, La Salle County Station, Unit 1, La Salle County, Illinois

Date of amendment request: October 14, 1986.

Description of amendment request: The proposed amendment to Operating License No. NPF–11 would revise the La Salle Unit 1 Technical Specifications for a one-time technical specification relief during the La Salle Unit 2 first refueling outage to extend the present ten-day period to thirty days during which only three diesel generators would be required to satisfy the standby AC on-site power requirements for Unit 1. This one time change will allow the installation of the diesel generator lube oil modification required by license condition to be installed on Unit 2 prior to startup after the first refueling for the common diesel generator "2A". Because 2A Diesel Generator is shared between the two units and existing Technical Specification 3.8.1.1 requires this diesel generator be operable whenever either unit is in operation, the licensee is unable to perform the modification without bringing both units to shutdown.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists (10 CFR 50.92(c)). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequenses of an accident previously evaluated; (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee indicates in its application that the proposed Technical Specifications are justifiable because:

1. The probability that a station blackout will occur during the 30 days is extremely unlikely.

2. The operating unit can be safely shutdown following a loss of offsite power transient even if one of the remaining diesels fails.

In addition to the above, the licensee contends that the La Salle diesels have a higher than average reliability. The average emergency diesel generator has

a reliability of 0.98 and those at La Salle have a reliability that exceed 0.99.

The licensee has determined, and the NRC staff agrees, that the proposed amendment will not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated because in the event of a loss of offsite power with the "2A" diesel inoperable for this period sufficient onsite power with a single active failure will still be available to shut down the operating unit safely.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated because emergency power is still available to those systems required to mitigate accidents evaluated in the FSAR, and, because the sole function of this diesel is to provide a portion of such power, its unavailability will not create any other new or different kind of accident.

3. Involve a significant reduction in the margin of safety because the probability of a loss of offsite power in addition to a remaining diesel generator failure during the period of these diesel generator modifications is sufficiently small to reasonably assure the health and safety of the public.

Accordingly, the Commission proposes to determine that the proposed changes to the Technical Specifications involve no significant hazards considerations.

Local Public Document Room location: Public Library of Illinois Valley Community College, Rural Route No. 1, Ogelsby, Illinois 61348.

Attorney for licensee: Isham, Lincoln and Burke, Suite 840, 1120 Connecticut Avenue, NW., Washington, DC 20036.

NRC Project Director: Elinor G. Adensam.

Commonwealth Edison Company, Docket No. 50–374, La Salle County Station, Unit 2, La Salle County, Illinois

Date of amendment request: October 16, 1986.

Description of amendment request: The proposed amendment to Operating License No. NPF–18 would revise the La Salle Unit 2 Technical Specifications to permit replacing an existing peripheral locking piston control rod drive module with a Fine Motion Control Rod Drive (FMCRD) module during one fuel cycle. The purpose of the test is to demonstrate the capability of an FMCRD module in a reactor environment. The proposed amendment incorporates three additional Special Test Exception's (¾.10.8, ¾.10.9 and ¾.10.10) which are necessary to allow testing of the FMCRD at the control rod location 02–43. This peripheral location, having a low reactivity worth, was specifically chosen in order to avoid any reactivity safety concerns.

Special Test Exception ¾.10.8 allows bypass of the FMCRD in the Rod Sequence Control System and programming out of the Rod Worth Minimizer. ¾.10.9 provides for determination of the Shutdown Margin with an increased allowance for the withdrawn worth of the FMCRD, and ¾.10.10 provides for disarming the FMCRD motor electrically in case of not meeting the shutdown margin requirement.

In addition, the Operational Conditions applicable to the Technical Specification 3.1.1, 3.1.3.1 through 3.1.3.7, 3.1.4.1 and 3.1.4.2 are marked with footnotes to reflect incorporations of these exceptions. The Technical Specification 3.9.1 is modified to assure that the core alterations for control rods other than the FMCRD can proceed only after the FMCRD is fully inserted and its motor electrically disarmed.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists (10 CFR 50.92(c)). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) Involve a significant increase in the probability or consequenses of an accident previously evaluated; (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee has determined, and the NRC staff agrees, that the proposed amendment will not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated because: (a) Interconnections between the new FMCRD and existing plant systems and equipment have been minimized and configured to include sufficient protection to assure that any potential electrical fault within the FMCRD and its supporting equipment will not propagate back into the rest of the plant equipment to which it is directly or indirectly connected; (b) replacement of the locking piston control rod drive (LPCRD) module at a peripheral core location with an FMCRD does not affect the fail-safe feature of the reactor protection system; (c) even when postulating independent or concomitant misoperation of the FMCRD, results of the analyzed transient or accident events (and control rod related parameters such as shutdown margin and scram reactivity worth) would bound the reactivity effects from the postulated misoperation; and (d) the inserted FMCRD (by administrative control) will not be moved until reactor power is greater than 25 percent and a rod pattern has been established in order to free the FMCRD rod from the Rod Sequence Control Sequence (RSCS) logic and the Rod Worth Minimizer (RWM) program as proposed by the Technical Specification Exception 3/4.10.9 (RSCS and RWM restrictions apply only during 0 to 20 percent reactor power level for establishing a rod pattern).

2. Create the possibility of a new or different kind of accident from any accident previously evaluated because: (a) The worst case (i.e., bounding) accidents and the assumptions used in the analysis of these accidents remain unchanged; (b) the replaced FMCRD, which utilizes hydraulic equipment similar to the replaced LPCRDs to scram and a small electric motor for shimming purposes, does not pose a concern of a new accident since the FMCRD is located at a peripheral location which has minimal impact on reactor operation or accident analysis; and (c) inadvertent withdrawal of the FMCRD during refueling will be prevented by disconnecting the power supply to the electric motor and special administrative controls will be in place for refueling bridge movement or control rod withdrawal.

3. Involve a reduction in the margin of safety because the low reactivity worth location of the FMCRD assures that: (a) The FMCRD rod would not likely reach prompt critical due to a rod withdrawal error and the produced peak fuel enthalpy would be well within those of the generic analyses and the licensing criterion of 170 cal/gm; (b) in case of an FMCRD rod drop accident postulated conservatively in the lower power region, a low peak fuel enthalpy (less than 100 cal/gm) would result, well under the licensing criterion of 280 cal/gm; (c) the associated minimum critical power ratio (MCPR) limit would not be approached because of a rod withdrawal error; and (d) the requirement of the current Technical Specification for calculated shutdown margin (equal to or greater than 0.38 percent delta k/k) will be met throughout the cycle based on the design shutdown margin of 1.0 percent delta k/k assuming the FMCRD rod and the strongest worth rod are fully withdrawn at the limiting point in the cycle.

Accordingly, the Commission proposes to determine that the proposed

changes to the Technical Specifications involve no significant hazards considerations.

Local Public Document Room location: Public Library of Illinois Valley Community College, Rural Route No. 1, Ogelsby, Illinois 61348.

Attorney for licensee: Isham, Lincoln and Burke, Suite 840, 1120 Connecticut Avenue, NW., Washington, DC 20036.

NRC Project Director: Elinor G. Adensam.

Commonwealth Edison Company, Docket No. 50–265, Quad Cities Nuclear Power Station, Unit 2, Rock Island County, Illinois

Date of amendment request: September 18, 1986.

Description of amendment request: This request includes Technical Specification (TS) changes to reflect Cycle 9 reload fuel and transient analyses. In addition, the licensee has requested the deletion of the provisions for Single Loop Operation (SLO) in the body of the facility TS. More specifically, Commonwealth Edison proposes to amend Facility Operating License DRP–30 for Quad Cities Unit 2 to support the Cycle 9 core reload. The proposed changes include: (1) Incorporation of the Cycle 9 Minimum Critical Power Ratio (MCPR) limit determined by the Cycle 9 transient analysis, (2) Addition of Maximum Average Planar Linear Heat Generation Rate (MAPLHGR) limits for the reload fuel and extension of existing limits to 40,000 MWD/t for fuel type BP8DRB282, and (3) Deletion of the existing License Condition addressing SLO and the incorporation of SLO in the body of the TS.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards determination exists as stated in 10 CFR 50.92(c).

10 CFR 50.91 requires at the time a licensee requests an amendment, it must provide to the Commission its analyses, using standards in § 50.92, about the issue of no significant hazards consideration. Therefore, in accordance 10 CFR 50.91 and 10 CFR 50.92, the licensee has performed and provided the following analysis:

Commonwealth Edison has evaluated the proposed Technical Specification amendment and determined that it does not represent a significant hazards consideration. Based on the criteria for defining a significant hazards consideration established in 10 CFR 50.92(c), operation of Quad Cities Unit 2 Cycle 9 in accordance with the proposed amendments will not:

A. Involve a significant increase in the probability or consequences of an accident previously evaluated because:

(1&2) The incorporation of the MCPR and MAPLHGR limits noted above is explicitly provided to establish limits on normal reactor operation which ensure that the core is operated within the assumptions and initial conditions of previous accident analyses. Operation within these limits will assure that the consequences of the affected accident, the Loss of Coolant Accident, remain with[in] the results of the previous analyses. These limits were generated using analytical methods previously approved by the NRC. The probability of an accident is not affected by this change because no physical systems or equipment which could initiate an accident are affected.

(3) The proposed SLO provisions are explicitly based on analyses performed by General Electric using NRC approved methods, to determine required adjustments in operating restrictions (MCPR, MAPLHGR) for SLO. Operation within the proposed SLO limits has been previously analyzed to assure that the consequences of accidents are not increased. The probability of an accident is not increased because operation in single loop has been previously approved for Quad Cities and has no causal relationship with the equipment or system failures necessary to initiate an accident.

B. Create the possibility of a new or different kind of accident from any accident previously evaluated because:

(1&2) The proposed MCPR and MAPLHGR limits represent limitations on core power distribution which do not directly affect the operation or function of any system or component. As a result, there is no impact on or addition of any systems or equipment whose failure could initiate an accident.

(3) SLO has been previously analyzed and approved for Quad Cities.

C. Involve a significant reduction in the margin of safety because all of the proposed changes have been analyzed to demonstrate that the consequences of transients or accidents are not increased beyond that previously evaluated and accepted at Quad Cities.

Based on the above discussion, Commonwealth Edison concludes that the proposed amendments do not represent a significant hazards consideration.

The staff has reviewed the licensee's no significant hazards consideration determination and agrees with the licensee's analysis. Therefore, the staff proposes to determine that the application for amendment involves no significant hazards consideration.

Local Public Document Room location: Moline Public Library, 504—17th Street, Moline, Illinois 61265.

Attorney for licensee: Mr. Robert G. Fitzgibbons, Jr., Isham, Lincoln, & Beale, Three First National Plaza, Suite 5200, Chicago, Illinois 60602.

NRC Project Director: John A. Zwolinski.

Commonwealth Edison Company, Docket Nos. 50–254 and 50–265, Quad Cities Nuclear Power Station, Units 1 and 2, Rock Island County, Illinois

Date of amendment request: October 22, 1986.

Description of amendment request: The proposed amendment to the Quad Cities Units 1 and 2 Technical Specifications (TS) to modify the Low Pressure Coolant Injection (LPCI) pump flow test requirements from the current three pump test demonstrating 14,500 gpm to a two pump test demonstrating 9,000 gpm. This change is required to support facility modification to the Units 1 and 2 LPCI pump minimum flow valve control logics to resolve a single failure concern identified in Inspection and Enforcement Bulletin (IEB) 86–01.

The existing LPCI loop selection logic is such that failure of either the "A" loop or "B" loop flow sensor would close both the "A" and "B" 'minimum flow valves. In response to IEB 86–01, this logic is being modified so that the "A" valve is controlled only by the "A" flow sensor and the "B" valve by the "B" sensor. With this configuration, during LPCI injection through the loop crosstie the minimum flow valve on the operating LPCI loop would remain open, thereby reducing the LPCI loop flow (consisting of two LPCI pumps) by the amount of recirculating flow through the minimum flow valve.

The original design of the LPCI system required three pumps with a combined flow capacity of 14,500 gpm. In 1974, 10 CFR 50.46/Appendix K was implemented requiring re-analysis of the Design Basis Loss of Coolant Accident (DBLOCA) to demonstrate compliance with the revised peak clad temperature (PCT) limit (2200 °F) and single failure criterion. This is the current Emergency Core Cooling System licensing basis. In the current Appendix K LOCA analysis, the most limiting event is the hypothetical, double-ended recirculation suction line break with an assumed failure of the LPCI injection valve. This scenario assumes no credit for the LPCI pumps; therefore, the proposed TS change in the LPCI flow has no effect on this event and the core cooling capability is not reduced for the most limiting event.

The second most limiting break and single failure combination, which takes credit for LPCI cooling, is the DBA recirculation suction line break with a diesel generator failure. This scenario requires one low pressure core spray pump and two LPCI pumps for core cooling. Commonwealth Edison requested General Electric analyze this

event assuming the proposed 9,000 gpm flowrate for two LPCI pumps rather than the 9,667 gpm flowrate assumed in the initial Appendix K analysis. The results of the analysis indicate that, with the revised flowrate, the PCT increases by 32°F to 1793°F. This temperature is well below the Quad Cities limiting break PCT and the 2200°F limit set by 10 CFR 50.46.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards determination exists as stated in 10 CFR 50.92(c).

10 CFR 50.91 requires at the time a licensee requests an amendment, it must provide to the Commission its analyses, using the standards in § 50.92, about the issue of no significant hazards consideration. Therefore, in accordance with 10 CFR 50.91 and 10 CFR 50.92, the licensee has performed the following analysis.

Commonwealth Edison has evaluated the proposed Technical Specification amendment and determined that it does not represent a significant hazards consideration. Based on the criteria for defining a significant hazards consideration established in 10 CFR 50.92(c), operation of Quad Cities in accordance with the proposed amendment will not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated because the proposed LPCI flowrate does not affect the most limiting design basis LOCA and for the event that is affected, the slightly increased peak cladding temperature is well below the limiting event peak cladding temperature and the limit set by the NRC. The probability of a LOCA is unaffected since the proposed change affects an accident mitigating system and has no relationship to the failures or events necessary to initiate an accident.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated because the proposed change in flow rate requirements does not affect any systems or equipment whose failure or malfunction during operation could lead to the initiation of a reactor transient or accident.

3. Involve a significant reduction in the margin of safety since the analysis supporting this Technical Specification change showed that existing margins to safety are preserved because the existing design basis LOCA is unchanged. The change in peak clad temperature for the affected non-limiting event is insignificant in comparison to the available margin.

Based on the previous discussion Commonwealth concludes that the proposed Technical Specification changes do not represent a significant hazards consideration.

The staff has reviewed the licensee's no significant hazards consideration determination and agrees with the licensee's analysis. Therefore, the staff proposed to determine that the application for amendments involves no significant hazards consideration.

Local Public Document Room location: Moline Public Library, 504—17th Street, Moline, Illinois 61265.

Attorney for licensee: Mr. Michael I. Miller; Isham, Lincoln, & Beale, Three First National Plaza, Suite 5200, Chicago, Illinois 60602.

NRC Project Director: John A. Zwolinski.

Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket No. 50–366, Edwin I. Hatch Nuclear Plant, Unit No. 2, Appling County, Georgia

Date of amendment request: August 19, 1986.

Description of amendment request: The proposed amendment would modify the Technical Specifications (TS) to correct the dummy load profiles provided for testing the station batteries under simulated emergency battery loading conditions. The changes are proposed to reflect past design changes in the plant that have affected this emergency load profile.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists (10 CFR 50.92(c)). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. These changes do not result in any new modes of operation and therefore do not affect the probability of any previously evaluated accidents or create the possibility of a new or different kind of accident. Correcting these test load profiles should ensure that consequences of previously evaluated accidents are not increased and that existing margins of safety are maintained.

On the basis of the above, the Commission has determined that the requested amendment meets the three criteria and therefore has made a proposed determination that the amendment application does not involve a significant hazards consideration.

Local Public Document Room location: Appling County Public Library, 301 City Hall Drive, Baxley, Georgia.

Attorney for licensee: Bruce W. Churchill, Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: Daniel R. Muller.

Indiana and Michigan Electric Company, Docket No. 50–315, Donald C. Cook Nuclear Plant, Unit No. 1, Berrien County, Michigan

Date of amendment request: October 1, 1986.

Description of amendment request: The proposed amendment would change the Technical Specifications to include a new Section 4.0.6 which by specific reference would allow certain tests normally designated as 18 month surveillances to be delayed until the end of the next refueling outage currently scheduled to begin during the second quarter of 1987. These tests include channel calibrations on steam generator level, and related post accident monitoring instrumentation, channel calibrations on pressurizer water level, channel calibrations of containment sump level and flow instruments, PORV limit switch calibrations, testing of residual heat removal/reactor coolant system interlocks, steam generator snubbers and Grinnel small bore snubber tests, battery service tests, divider barrier seal inspection, containment sump inspection, reactor coolant pump spray tests, diesel testing including relief valve and essential service water valve tests, auxiliary feedwater pumps and related engineered safety feature (ESF) testing, and time response testing for reactor trip and ESF instrumentation. There is one proposed editorial change.

Basis for proposed no significant hazards consideration determination: The Commission has provided guidance concerning the application of the standards for making a no significant hazards determination by providing certain examples (51 FR 7744). One of these examples (i) is a purely administrative change to technical specifications. The licensee has proposed to correct a typographical error by clarifying that semiannually means every 6 months rather than every 5 months. The example is directly related to this change.

The Commission's standard for determining whether a significant hazards consideration exists is as stated in 10 CFR 50.92. A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with a proposed amendment would not (1) involve a

significant increase in the probability or consequences of an accident previously evaluated; (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The changes proposed by the licensee will extend certain tests to the next refueling outage rather than shutdown the plant, which would be required to safely do the tests, beginning about midDecember. The safety significance, therefore, is in consideration of extending some 18 month tests until about 24 months and the confidence that the components or systems will still perform their intended function with this extension of time. The licensee has evaluated each test and has provided the basis for maintaining confidence that the components or systems will continue to function adequately. We have reviewed the licensee's submittal and summarize below our agreement with the licensee's findings.

The steam generator level and pressurizer level instrumentation have channel functional tests and channel checks periodically which demonstrate operability. Only the sensor is not checked in these tests, but comparison with other monitors and variables would reveal any significant changes in the sensor. The RHR/RCS interlocks are used to prevent opening full system pressure to the RHR system, therefore, there is no expected wear or deterioration expected that would make them inoperable. The extension will not result in a significant increase in the probability or consequences of a previously evaluated accident nor will it create the possibility of a new or different kind of an accident. Any loss of calibration during the extension is expected to be small and will not result in a significant reduction in the margin of safety.

The steam generator snubbers and Ginnell snubbers test extension is for the functional testing only; visual examination is not required until after the scheduled refueling. Visual examinations since 1975 have found less than 1% failure and only one Ginnell snubber failed to lock up in compression. For the extension period, this small failure rate is acceptable although none are expected due solely to the approximately six months extension. Even with this small failure rate, systems should operate as before and without a significant increase in the probability or consequences of an accident previously analyzed. Failure of the snubber itself should not create the possibility of a new or different kind of accident and would not involve a significant reduction in a margin of safety.

The containment sump flow and level instrumentation is backed up with humidity monitors, and RCS water inventory balances performed every 72 hours. The flow and level monitors calibration during the extension may have minor changes but the systems are not expected to completely fail. Even if they do, adequate backup monitors are available. The extension of time for calibration would not significantly increase the probability or consequences of an accident previously evaluated or create the possibility of a new or different kind of accident than previously analyzed. Any change in calibration would not significantly reduce a margin of safety.

The N-Train batteries are scheduled for a capacity test at the next refueling. All other tests on the battery to reveal any deterioration will still be performed and based on pact performance, the N-Train batteries are expected to have adequate capacity even with the extension proposed by the licensee. Likewise, the extension of time before testing the diesel generator's capability to energize, sequence, and shed emergency loads is not expected to reduce the overall ability of the diesel generators since other tests will continue to prove starting and running capability. The test results of previous associated circuitry surveillances do not indicate any problems with wear or failures. The tests on the PORV and block valves' emergency power supply and test on some essential service water valves that supply water to the diesels will be also be delayed with the diesel tests. The previous test data on these systems do not indicate any reason why the extension will affect them. As such, the delay in these tests does not involve a significant increase in the probability or consequences of an accident previously analysed nor will it create the possibility of a new or different kind of accident from any previously analyzed. The extension of time will not involve a significant reduction in a margin of safety.

The divider barrier seal limits ice condenser bypass leakage from the upper to lower volume in the event of an accident. The seal is a passive component and does not depend upon any other safety system to function. The test history indicates no problems with the seal and none that should occur during the extension. The containment sump inspection is to assure the sump is free of debris and its components are free of abnormal corrosion and distress. Housekeeping inspection procedures are followed after each containment entry to assure no debris is left after the entry. The extension of time is not expected to change the condition of the divider barrier seal or containment sump. Therefore, the proposed change does not increase the probabilities or consequences of an accident previously analyzed nor does it create any new or different kind of accident from any previously analyzed. The extension of time does not involve a significant reduction in a margin of safety.

The licensee proposes to extend the calibration of the PORV limit switches. These limit switches indicate either open or close and are not generally subject to mechanical drift. Additional indication of a leaking PORV is provided by tail pipe temperatures and pressurizer relief tank temperatures and pressure. Previous test results indicate that the extension of time should have no effect on the calibration of the switches. This change does not involve a significant increase in the probabilities or consequences of an accident previously analyzed nor does it create a new or different kind of accident. The extension of time does not involve a significant reduction in a safety margin.

The reactor coolant pumps spray test is to determine the capability to extinguish a fire at the pump. The system has not failed a test since it was installed and an extension of time before the next test should have no effect in the system operation. The auxiliary feedwater pump test proposed for extension is a channel functional test on loss of main feedwater and a pump start and valve actuation test upon receipt of appropriate signals. The auxiliary feedwater pumps have been called upon to operate since the last refueling but not all the appropriate signals were tested. The results of previous tests do not indicate that the extension of time should be a factor in any new failure. For both these system tests, the extension does not involve a significant increase in the probability or consequences of any previously analyzed accident nor does it create the possibility of a new or different kind of accident. The extension does not involve a significant reduction in a margin of safety.

The last proposed extension involves time response testing of reactor trip and ESF instrumentation. This instrumentation has not had a time response failure since initial startup, 11 years ago. Other surveillance tests such as channel checks, channel functional tests, and channel calibrations will continue to be performed except for a

few calibrations. This testing, and the test records since startup, supports the proposed change to extend the test period. This change does not involve a significant increase in the probability or consequences of any previous accident analyzed nor does it create the possibility of a new or different kind of accident. The extension does not significantly reduce any margin of safety.

Based on the above considerations, the staff proposes to determine that the requested changes do not involve a significant hazards consideration.

Local Public Document Room location: Maude Preston Palenske Memorial Library, 500 Market Street, St Joseph, Michigan 49085.

Attorney for licensee: Gerald Charnoff, Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 M Street, NW., Washington, DC 20036.

NRC Project Director: B.J. Youngblood.

Northeast Nuclear Energy Company, et al., Docket No. 50–336, Millstone Nuclear Power Station, Unit No. 2, New London County, Connecticut

Date of amendment request: September 26, 1986.

Description of amendment request: By application for license amendment dated September 26, 1986, Northeast Nuclear Energy Company, et al. (the licensee), requested changes to the Technical Specifications (TS) for Millstone Unit 2. The proposed changes would renumber TS 3/4.9.3, "Decay Time" and incorporate the following new requirement in the TS: (1) A limiting condition for operation (LCO) and associated surveillance requirement (SR) addresses the need for fuel, discharged from the reactor, to have a minimum decay time of 504 hours prior to suspending operability of the spent fuel pool cooling system, and (2) an LCO and SR to require that the reactor remain shutdown in Modes 5 or 6 until discharged fuel has achieved a decay time of 504 hours.

Basis for proposed no significant hazards consideration determination: On January 15, 1986, the NRC issued Amendment No. 109 to Facility Operating License No. DPR–65 for Millstone Unit 2. The amendment revised the TS to allow an increase in the spent fuel storage capability from 667 to 1112 fuel assemblies. In the safety evaluation associated with Amendment No. 109, the NRC staff concluded that the existing TS should be supplemented by requirements to limit the temperature in the spent fuel pool to 140 °F. In their letter dated November 27, 1985, the licensee had previously committed to submitting a proposed TS change. The application dated September 26, 1986 satisfies the licensee's commitment.

The proposed changes to the TS would require a combination of equipment to be operable, for spent fuel pool cooling, for 504 hours, which provides sufficient capacity to limit the spent fuel pool temperature to 140 °F. Following the 504 hour period, the spent fuel pool temperature can be maintained below 140 °F with a reduced complement of cooling equipment. The temperature limit of 140 °F is specified in Standard Review Plan 9.1.3, "Spent Fuel Pool Cooling and Cleanup System," and is partly based upon the need to protect the resins, used in the spent fuel pool cleanup system, from excessive temperatures.

On March 6, 1986, the NRC published guidance in the **Federal Register** (51 FR 7751) concerning examples of amendments that are not likely to involve a significant hazards consideration. One example provided in 51 FR 7751 of amendments not likely to involve significant hazards considerations is example (ii) which provides for "A change that constitutes an additional limitation, restriction, or control not presently included in the Technical Specifications: for example, a more stringent surveillance requirement."

The proposed TS provide for requirements on spent fuel pool cooling system operability, and restrictions on reactor startup, which were not previously in the TS and thus represent additional restrictions consistent with example (ii) above. Accordingly, the Commission proposes to determine that the proposed changes to TS 3/4.9.3 involve no significant hazards considerations.

Local Public Document Room location: Waterford Public Library, 49 Rope Ferry Road, Waterford, Connecticut 06385.

Attorney for licensee: Gerald Garfield, Esq., Day, Berry and Howard, One Constitution Plaza, Hartford, Connecticut 06103.

NRC Project Director: Ashok C. Thadani.

Sacramento Municipal Utility District, Docket No. 50–312, Rancho Seco Nuclear Generating Station, Sacramento County, California

Date of amendment request: January 24, 1986, as supplemented September 19, 1986.

Description of amendment request: The proposed amendment would revise Technical Specification (TS) Table 2.3–1, "Reactor Protection System Trip Setting Limits," and Figure 2.3–1, "Protective Systems Maximum Allowable Setpoints, Pressure vs Temperature." The licensee proposes to (1) increase the reactor coolant system (RCS) high pressure reactor trip setpoint from 2300 psig to 2355 psig, and (2) increase the anticipatory reactor trip on turbine trip arming threshold from 20 percent reactor power to 45 percent reactor power to reduce the number of challenges to plant safety systems and increase plant availability. The licensee also proposes to revise the related bases to reflect this proposed amendment.

Basis for proposed no significant hazards consideration determination: In its January 24, 1986 letter, the licensee stated that the proposed TS amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated. The proposed increase of the RCS high pressure reactor trip from 2300 psig to 2355 psig and the percent reactor power at which the anticipatory reactor trip system (ARTS) is disabled from 20 percent to 45 percent have been evaluated and, based on the NRC approved safety analyses contained in Babcock & Wilcox reports BAW–1890, "Justification for Raising Setpoint for Reactor Trip on High Pressure," and BAW–1893, "Basis for Raising Arming Threshold for Anticipatory Reactor Trip on Turbine Trip," there are no increases in the probabilities of previously evaluated accidents.

The licensee also stated that the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated because 2355 psig is the design high pressure trip setpoint and, therefore, the original Final Safety Analysis Report analyses remain applicable for this setpoint. In addition, at a pressure trip setpoint of 2355 psig, runbacks from 45 percent power can be achieved.

Finally, the licensee stated that the proposed amendment does not involve a significant reduction in a margin of safety because the increase in the reactor high pressure trip will have negligible impact on the frequency of opening the power-operated-relief-valve (PORV) during anticipated overpressurization transients. The probability of an open PORV failing to close is sufficiently low to satisfy small break loss of coolant accident criteria for the PORV.

The Commission agrees with the licensee's evaluation of the application

for amendment against the criteria of 10 CFR 50.92(c), and therefore proposes to determine that the amendment application does not involve a significant hazards consideration.

Local Public Document Room location: Sacramento City-County Library, 828 I Street, Sacramento, California 95814.

Attorney for licensee: David S. Kaplan, Sacramento Municipal Utility District, 6201 S Street, P.O. Box 15830, Sacramento, California 95813.

NRC Project Director: John F. Stolz.

Sacramento Municipal Utility District, Docket No. 50–312, Rancho Seco Nuclear Generating Station, Sacramento County, California

Dates of amendment requests: January 29, 1986, February 14, 1986, March 20, 1986, and June 13, 1986.

Description of amendment requests: The proposed license amendments would make numerous changes to the Technical Specifications (TSs) and their bases to correct typographical errors and punctuation, change nomenclature, number previously unnumbered pages, define a previously undefined time period, update the table of contents, delete and add to correct inadvertent errors originating from various previously approved license amendments, and to achieve clarity and consistency throughout the TSs.

Basis for proposed no significant hazards consideration determination: The Commission has provided guidance concerning the application of the standards in 10 CFR 50.92 by providing certain examples of amendments that are considered not likely to involve significant hazards considerations (51 FR 7751). One of these examples is (i) a purely administrative change to technical specifications: for example, a change to achieve consistency throughout the technical specifications, correction of an error, or a change in nomenclature. The TS changes proposed by the licensee are all encompassed by this example. The Commission proposes, therefore, to determine that the proposed amendments involve no significant hazards considerations.

Local Public Document Room location: Sacramento City-County Library, 828 I Street, Sacramento, California 95814.

Attorney for licensee: David S. Kaplan, Sacramento Municipal Utility District, 6201 S Street, P.O. Box 15830, Sacramento, California 95813.

NRC Project Director: John F. Stolz.

South Carolina Electric and Gas Company, South Carolina Public Service Authority, Docket No. 50–395, Virgil C. Summer Nuclear Station, Unit 1, Fairfield County, South Carolina

Date of amendment request: September 16, 1986.

Description of amendment request: The amendment would change Technical Specification surveillance requirement 3.6.1.6, "Containment Structural Integrity." The change revises the number and the representative sample of containment tendons to be tested, deletes Technical Specification Tables 4.6–1a, 4.6–1b, and 4.6–2 which list surveillance tendons and adjacent tendons base values and normalizing factors, and revises downward the minimum required average tendon force for each group (dome, vertical and hoop) of tendons.

Basis for proposed no significant hazards consideration determination: The proposed Technical Specification revision identifies the appropriate surveillance intervals and number of tendons to be examined for all subsequent surveillances. Specific tendons have purposely not been included in tables in the proposed Technical Specification revision and will instead be identified in station surveillance procedures. Additionally, acceptable base values and normalizing factors for each specific tendon will be identified in the station procedures and not in the Technical Specifications. This format will eliminate the need for further Technical Specification changes in the event a tendon has to be substituted at inspection time due to an unforeseen interference which may have developed.

Calculations have been performed which determined that the present Technical Specification limits for the minimum average tendon forces are very conservative. Those calculations support the new minimum average tendon forces. These forces are 2.9 percent less for vertical tendons, 4.7 percent less for dome tendons, and 15.3 percent less for hoop tendons from the original Technical Specification values. The new minimum average tendon forces have been verified acceptable to ensure that the containment tendons will perform their design basis function under all postulated loads and loading conditions.

The Commission has provided standards for determining whether a significant hazards consideration exists (10 CFR 50.92(c)). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; (2) create the possibility of a new or different kind of accident from accidents previously evaluated; or (3) involve a significant reduction in margin of safety. The staff has determined that the requested amendment:

(1) Would not involve a significant increase in the probability or consequences of an accident previously evaluated because it does not change any of the hardware on the tendon system, it specifies the testing program to be used in the future for containment tendons, and the minimum average tendon force has been verified to enable the containment tendons to perform their design basis function under all postulated loading conditions.

(2) Would not create the possibility of a new or different kind of accident from any accident previously evaluated because it provides for a continued testing program for tendons that will ensure containment integrity; and

(3) Would not involve a significant reduction in the margin of safety because the testing program will continue to provide assurance of the integrity of the containment post tensioning system and will provide for warning and appropriate actions if abnormal degradation should develop and the minimum average tendon force values have been verified to enable the containment to meet all postulated loads and loading combinations as required to maintain safety.

Accordingly, the Commission proposes to determine that this change does not involve significant hazards considerations.

Local Public Document Room location: Fairfield County Library, Garden and Washington Streets, Winnsboro, South Carolina 29180.

Attorney for licensee: Randolph R. Mahan, South Carolina Electric and Gas Company, P.O. Box 764, Columbia, South Carolina 29218.

NRC Project Director: Lester S. Rubenstein.

Toledo Edison Company and The Cleveland Electric Illuminating Company, Docket No. 50–346, Davis-Besse Nuclear Power Station, Unit No. 1, Ottawa County, Ohio

Date of amendment request: April 22, 1985, as supplemented July 31, 1986.

Description of amendment request: The proposed amendment would revise the Technical Specifications (TSs) to delete the isolation (closure) times for certain High Pressure Injection (HPI)

system and Containment Spray (CS) system isolation valves. The proposed amendment would also correct two typographical errors.

Basis for proposed no significant hazards consideration determination: The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that the operation of the facility in accordance with the proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The proposed amendment involves the deletion of isolation times for certain HPI and CS system valves which are normally closed and open automatically upon a Safety Features Actuation Signal (SFAS) to perform their safety function. These valves are not provided with an automatic closure feature.

The proposed amendment would not:

(1) Involve a significant increase in the probability or consequences of an accident previously evaluated. The deletion of the closing time requirement would not increase the probability of an accident previously evaluated. The safety function requires that the isolation valves open rather than close upon an actuation signal. The correction of typographical errors is an administrative change.

(2) Create the possibility of a new or different kind of accident from any accident previously evaluated. These changes, which delete the closing time for the isolation valves on the HPI and CS lines, would not create the possibility of a new or different kind of accident since the function of these valves is to open rather than close. The correction of the typographical errors is an administrative change.

(3) Involve a significant reduction in the margin of safety. The deletion of the closing time for these valves would not reduce the margin of safety as their safety function is to open (valves are normally closed) upon SFAS signal and not to close. The correction of the typographical errors is an administrative change. All margins of safety assumed in previous analyses remain unchanged.

Therefore, the Commission proposes to determine that the application does not involve a significant hazards consideration.

Local Public Document Room location: University of Toledo Library, Documents Department, 2801 Bancroft Avenue, Toledo, Ohio 43606.

Attorney for licensee: Gerald Charnoff, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: John F. Stolz.

PREVIOUSLY PUBLISHED NOTICES OF CONSIDERATION OF ISSUANCE OF AMENDMENTS TO OPERATING LICENSES AND PROPOSED NO SIGNIFICANT HAZARDS CONSIDERATION DETERMINATION AND OPPORTUNITY FOR HEARING

The following notices were previously published as separate individual notices. The notice content was the same as above. They were published as individual notices because time did not allow the Commission to wait for this bi-weekly notice. They are repeated here because the bi-weekly notice lists all amendments proposed to be issued involving no significant hazards consideration.

For details, see the individual notice in the **Federal Register** on the day and page cited. This notice does not extend the notice period of the original notice.

Florida Power & Light Company, et al., Docket No. 50–389, St. Lucie Plant, Unit No. 2, St. Lucie County, Florida

Date of amendment request: July 2, 1986.

Brief description of amendment: The amendment would permit the licensee to transfer Unit No. 1 spent fuel from the Unit No. 1 spent fuel pool to the Unit No. 2 spent fuel pool.

Date of publication of individual notice in **Federal Register:** October 20, 1986 (51 FR 37242).

Expiration date of individual notice: November 19, 1986.

Local Public Document Room location: Indian River Junior College Library, 3209 Virginia Avenue, Fort Pierce, Florida 33450.

NOTICE OF ISSUANCE OF AMENDMENT TO FACILITY OPERATING LICENSE

During the period since publication of the last bi-weekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing in connection with these actions was published in the **Federal Register** as indicated. No request for a hearing or petition for leave to intervene was filed following this notice.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated. For further details with respect to the action see: (1) The applications for amendments, (2) the amendments, and (3) the Commission's related letters, Safety Evaluations and/or Environmental Assessments as indicated. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, and at the local public document rooms for the particular facilities involved. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Licensing.

Alabama Power Company, Dockets Nos. 50–348 and 50–364, Joseph M. Farley Nuclear Plant, Unit Nos. 1 and 2, Houston County, Alabama

Date of application for amendments: December 16, 1985, supplemented August 1, 1986.

Brief description of amendments: The amendment revises Technical Specifications Limiting Conditions of Operation and Surveillance Requirements for the reactor trip breakers including the automatic shunt trip feature modifications. These modifications resulted from the Commission staff's Generic Letter 85–28 for Item 4.3 dated July 8, 1983.

Date of issuance: October 24, 1986.

Effective date: October 24, 1986.

Amendment Nos.: 67 and 59.

Facilities Operating License Nos. NPF–2 and NPF–8. Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** January 29, 1986 (51 FR 3709).

The August 1, 1986, submittal provided supplemental information only and therefore did not change the determination of the initial **Federal Register** Notice. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 24, 1986.

No significant hazards consideration comments received: No.

Local Public Document Room location: George S. Houston Memorial Library, 212 W. Burdeshaw Street, Dothan, Alabama 36303.

Commonwealth Edison Company, Docket Nos. 50–373 and 50–374, La Salle County Station, Units 1 and 2, La Salle County, Illinois

Date of application for amendments: June 27, 1986.

Brief description of amendments: The amendments to Operating License No. NPF–11 and Operating License No. NPF–18 revise the La Salle Units 1 and 2 Technical Specifications to amend the reporting requirements for iodine spiking and would eliminate the existing requirements to shut the plants down if coolant iodine activity limits are exceeded for 800 hours in a 12 month period. These changes are in accordance to Generic Letter 85–19, "Reporting Requirements on Primary Coolant Iodine Spikes", dated September 27, 1985.

Date of issuance: October 23, 1986.

Effective date: October 23, 1986.

Amendment Nos.: 46 and 28.

Facility Operating License Nos. NPF–11 and NPF–18: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** August 13, 1986 (51 FR 28994). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated October 23, 1986.

No significant hazards consideration comments received: No.

Local Public Document Room location: Public Library of Illinois Valley Community College, Rural Route No. 1, Oglesby, Illinois 61348.

Consumers Power Company, Docket No. 50–255, Palisades Plant, Van Buren County, Michigan

Date of application for amendment: June 20, 1986.

Brief description of amendment: This amendment increased the allowable quantity of CS–137 contained in sealed calibration sources used in support of operation of the facility and added a Technical Specification requiring leakage testing of all sealed sources. The amendment also corrected a typographical error.

Date of issuance: October 15, 1986.

Effective date: October 15, 1986.

Amendment No: 98.

Provisional Operating License No. DPR–20: The amendment revised the license and the Technical Specifications.

Date of initial notice in **Federal Register:** July 30, 1986 (51 FR 27276 at 27282).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 15, 1986.

No significant hazards consideration comments received: No.

Local Public Document Room location: Van Zoeren Library, Hope College, Holland, Michigan 49423.

Duke Power Company, et al., Docket No. 50–413, Catawba Nuclear Station, Unit 1, York County, South Carolina

Date of application for amendment: August 6, 1986.

Brief description of amendment: The amendment changes a license condition to incorporate the recommendations and conclusions contained in the NRC staff's Safety Evaluation Report on Operability/Reliability of Emergency Diesel Generators Manufactured by Transamerica Delaval, Inc.

Date of issuance: October 21, 1986.

Effective date: October 21, 1986.

Amendment No.: 16.

Facility Operating License No. NPF–35: Amendment revised the Operating License.

Date of initial notice in **Federal Register:** August 27, 1986 (51 FR 30567).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 21, 1986.

No significant hazards consideration comments received: No.

Local Public Document Room location: York County Library, 138 East Black Street, Rock Hill, South Carolina 29730.

Florida Power Corporation, et al., Docket No. 50–302, Crystal River Unit No. 3 Nuclear Generating Plant, Citrus County, Florida

Date of application for amendment: December 10, 1985.

Brief description of amendment: This amendment changes the Technical Specifications to increase the enrichment of fuel assemblies stored in Spent Fuel Pool B and the dry fuel storage rack from 3.5 weight percent to 4.0 weight percent uranium-235.

Date of issuance: October 14, 1986.

Effective date: October 14, 1986.

Amendment No.: 92.

Facility Operating License No. DPR–72: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** September 10, 1986 (51 FR 32267).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 14, 1986.

No significant hazards consideration comments received: No.

Local Public Document Room location: Crystal River Public Library, 668 NW. First Avenue, Crystal River, Florida 32629.

Florida Power Corporation, et al., Docket No. 50–302, Crystal River Unit No. 3 Nuclear Generating Plant, Citrus County, Florida

Date of application for amendment: August 14, 1986, as supplemented October 6, 1986.

Brief description of amendment: This amendment extends the surveillance interval for high-pressure injection and low-pressure injection pumps and valves from once per 18 months to once per fuel cycle for Cycle 6 only. Other changes proposed in the August 14, 1986 application are being handled separately.

Date of issuance: October 21, 1986.

Effective date: October 21, 1986.

Amendment No.: 93.

Facility Operating License No. DPR–72: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** September 19, 1986 (51 FR 33322).

Since the initial notice, the licensee submitted a supplement dated October 6, 1986, which responded to the Commission's request for additional information. The information did not change the original application in any way, and therefore did not warrant renoticing.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 21, 1986.

No significant hazards consideration comments received: No.

Local Public Document Room location: Crystal River Public Library, 668 NW. First Avenue, Crystal River, Florida 32629.

Florida Power and Light Company, et al., Docket No. 50–389, St. Lucie Plant, Unit No. 2, St. Lucie County, Florida

Date of application of amendment: July 15, 1986 as supplemented by two letters dated September 4, 1986 and one letter dated October 10, 1986.

Brief description of amendment: This amendment changed the Reactor Coolant System Pressure/Temperature

(P/T) limit figures to be effective up to four effective full power years of operation. The amendment changed the technical specifications dealing with overpressure protection systems because they are linked with the new P/T limit figures. The amendment also added the shutdown cooling system relief valves as overpressure protection devices. The applicable bases sections are changed to reflect the above changes.

Date of issuance: October 16, 1986.
Effective date: October 16, 1986.
Amendment No.: 16.
Facility Operating License No. NPF-16: Amendment revised the Technical Specifications.
Date of initial notice in **Federal Register:** August 13, 1986 (51 FR 28992 at 28999).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 16, 1986. Additional information was provided by the licensee subsequent to the issuance of the notice in the **Federal Register.** The additional information did not alter the staff's proposed determination that a no significant hazards consideration is involved.

No significant hazards consideration comments received: No.

Local Public Document Room location: Indian River Junior College Library, 3209 Virgina Avenue, Ft. Pierce, Florida.

Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Dockets Nos. 50-321 and 50-366, Edwin I. Hatch Nuclear Plant, Units Nos. 1 and 2, Appling County, Georgia

Date of application for amendments: January 27, 1986, as supplemented July 10, 1986.

Brief description of amendment: The amendments revised the TSs for Hatch Units 1 and 2 to require additional sampling of gaseous effluents following shutdown, startup, or power level changes greater than 15% of rated thermal power (1) to be required only if the primary coolant activity of I-131 and the noble gas activity had increased by more than a factor of 3, and (2) to be followed by analysis of only the principal gamma emitters.

Date of issuance: October 23, 1986.
Effective date: October 23, 1986.
Amendments Nos.: 130 and 65.
Facility Operating License Nos. DPR-57 and NPF-5: Amendment revised the Technical Specifications.
Date of initial notice in **Federal Register:** May 7, 1986 (51 FR 16927) and September 10, 1986 (51 FR 32269).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 23, 1986.

No significant hazards consideration comments received: No.

Local Public Document Room location: Appling County Public Library, 301 City Hall Drive, Baxley, Georgia.

Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket No. 50-366, Edwin I. Hatch Nuclear Plant, Unit No. 2, Appling County, Georgia

Date of application for amendment: July 11, 1986.

Brief description of amendment: The amendment revises Table 3.8.2.6-1 "Primary Containment Penetration Conductor Overcurrent Protective Devices" to reflect the installation of two additional overcurrent protective devices.

Date of issuance: October 22, 1986.
Effective date: October 22, 1986.
Amendment No.: 64.
Facility Operating License No. NPF-5: Amendment revised the Technical Specifications.
Date of initial notice in **Federal Register:** September 10, 1986 (51 FR 32268).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 22, 1986.

No significant hazards consideration comments received: No.

Local Public Document Room location: Appling County Public Library, 301 City Hall Drive, Baxley, Georgia.

Kansas Gas and Electric Company, Kansas City Power & Light Company, Kansas Electric Power Cooperative, Inc., Docket No. 50-482, Wolf Creek Generating Station, Coffey County, Kansas

Date of application for amendment: March 4, 1986, as supplemented July 29 and September 18, 1986. The supplement of September 18, 1986 did not substantively change original amendment request.

Brief description of amendment: The amendment modifies the Technical Specifications to reflect a title change, a change in reporting relationship, correction of typographical errors, addition and deletion of groups from the Unit Organization figure, addition of positions and group from the Nuclear Department organization and changes in membership to the Nuclear Safety Review Committee.

Date of issuance: October 22, 1986.
Effective date: October 22, 1986.
Amendment No.: 2.
Facility Operating License No. NPF-42: Amendment revised the Technical Specifications.
Date of initial notice in **Federal Register:** July 30, 1986 (51 FR 27285) and August 13, 1986 (51 FR 29001).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 22, 1986.

No significant hazards consideration comments received: No.

Local Public Document Room location: The William Allen White Library, Emporia State University, Emporia, Kansas; and Washburn University School of Law, Topeka, Kansas.

Louisiana Power and Light Company, et al., Docket No. 50-382, Waterford Steam Electric Station, Unit 3, St. Charles Parish, Louisiana

Dates of application for amendment: August 1, 1985, as supplemented October 8, 1986.

Brief Description of Amendment: The amendment revises the Technical Specifications by correcting three typographical errors in Table 3.8-1, changing Technical Specification 3/4.9.7 so that use of the spent fuel handling machine is not required for movement of new fuel outside the spent fuel pool, and revising Technical Specification 3/4.7.2, "Steam Generator Pressure/Temperature Limits".

Date of Issuance: October 16, 1986.
Effective Date: October 16, 1986.
Amendment No.: 6.
Facility Operating License No. NPF-38: Amendment revised the Technical Specifications.
Date of Initial Notices in **Federal Register:** October 23, 1985 (50 FR 43028-43030).

The Commission's related evaluation is contained in a Safety Evaluation dated October 16, 1986. No significant hazards consideration comments were received.

Local Public Document Room Location: University of New Orleans Library, Louisiana Collection, New Orleans, Louisiana 70122.

Louisiana Power and Light Company, et al., Docket No. 50-382, Waterford Steam Electric Station, Unit 3, St. Charles Parish, Louisiana

Dates of application for amendment: August 1, 1985, as supplemented October 8, 1986.

Brief description of amendment: The amendment revises the Technical Specifications by increasing the authorized fuel enrichment limit,

revising the uncertainties allowance for spent fuel storage racks, changing the surveillance interval for Control Element Assembly rod drop timing tests, correcting an error in the characterization of uranium fuel rod loading, and revising the definition of a Shift Technical Advisor.

Date of issuance: October 16, 1986.

Effective date: October 16, 1986.

Amendment No.: 7.

Facility operating license No. NPF-38: Amendment revised the Technical Specifications.

Date of Initial Notices in **Federal Register:** August 27, 1986 (51 FR 30574 and 30575); September 10, 1986 (51 FR 32273) and September 11 and 25, 1986 (51 FR 32381 and 34170).

The Commission's related evaluation is contained in a Safety Evaluation dated October 16, 1986. No significant hazards consideration comments were received.

Local public document room location: University of New Orleans Library, Louisiana Collection, New Orleans, Louisiana 70122.

Mississippi Power & Light Company, Middle South Energy, Inc., South Mississippi Electric Power Association, Docket No. 50-416, Grand Gulf Nuclear Station, Unit 1, Claiborne County, Mississippi

Date of application for amendment: January 29, 1986 as amended April 14, July 16 and August 26, 1986; June 13, 1986, as amended August 26, 1986; and July 25, 1986, as amended August 11, 1986.

Brief description of amendment: This amendment changes Technical Specifications (TSs) by: changing the nomenclature of certain drywell chilled water system isolation valves and associated electrical protective devices; correcting an inconsistency in records retention TSs; changing the TSs for the drywell post-accident vacuum relief system to reflect installation of valve position indicators; correcting an error in referencing a reporting requirement for radiological environmental monitoring; changing the TSs for the control rod scram discharge volume to reflect installation of redundant level instrumentation, a redundant vent valve and a redundant drain valve; making permanent a temporary note that allows certain actuation signals of the high pressure core spray system to be inoperable for specified reactor conditions; and, adding TSs for the automatic depressurization system accumulators to reflect installation of pressure instrumentation. In addition, this amendment changes Operating License Condition 2.C.(33)(b) regarding the implementation of TMI Action Plan Item 1.G.1, "Special Low-Power Testing and Training" to make it consistent with present staff requirements.

Date of issuance: October 17, 1986.

Effective date: Changes in the Technical Specifications on Pages 3/4 6-31, 3/4 6-39, 3/4 6-42, 3/4 6-44, 3/4 12-1 and 6-20 and revised License Condition 2.C.(33)(b) are effective upon issuance of the amendment and the remainder of the changes in Technical Specifications are effective when the equipment necessitating the changes on affected TS pages is installed and operable but not later than startup following the first refueling outage.

Amendment No. 21.

Facility Operating License No. NPF-29. This amendment revised the Technical Specifications and License.

Date of initial notice in **Federal Register:** August 13, 1986 (51 FR 29002) and September 10, 1986 (51 FR 32275, 32276 and 32277).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 17, 1986.

No significant hazards consideration comments received: No.

Local Public Document Room location: Hinds Junior College, McLendon Library, Raymond, Mississippi 39154.

Mississippi Power & Light Company, Middle South Energy, Inc., South Mississippi Electric Power Association, Docket No. 50-416, Grand Gulf Nuclear Station, Unit 1, Claiborne County, Mississippi

Date of application for amendment: July 14, 1986 as amended August 15, September 4, and September 5, and supplemented October 3, 1986.

Brief description of amendment: This amendment changes the Technical Specifications for operation with new Exxon fuel assemblies replacing spent General Electric fuel assemblies in the reactor core.

Date of issuance: October 24, 1986.

Effective date: October 24, 1986.

Amendment No. 23.

Facility Operating License No. NPF-29. This amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** September 24, 1986 (51 FR 33955).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 24, 1986.

No significant hazards consideration comments received: No.

Local Public Document Room location: Hinds Junior College, McLendon Library, Raymond, Mississippi 39154.

Northern States Power Company, Docket No. 50-263, Monticello Nuclear Generating Plant, Wright County, Minnesota

Date of application for amendment: March 24 and July 22, 1986.

Brief description of amendment: The amendment revises the Technical Specifications to permit operation of the plant with only one recirculation loop in operation.

Date of issuance: October 22, 1986.

Effective date: October 22, 1986.

Amendment No.: 47.

Facility Operating License No. DPR-22. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** August 13, 1986 (51 FR 29004).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 22, 1986.

No significant hazards consideration comments received: No.

Local Public Document Room location: Minneapolis Public Library, Technology and Science Department, 300 Nicollet Mall, Minneapolis, Minnesota 55401.

Pacific Gas and Electric Company, Docket Nos. 50-275 and 50-323, Diablo Canyon Nuclear Power Plant, Unit Nos. 1 and 2, San Luis Obispo County, California

Date of application for amendments: June 10, 1986, as supplemented. August 19, 1986.

Brief description of amendments: These amendments revise the Technical Specification to (1) redefine the moderator temperature coefficient limits, (2) revise the F^N-delta-H partial power multiplier, and (3) delete the design feature description of the total weight of uranium in a fuel rod. These changes will facilitate the operation of Unit 1 Cycle 2. Change (1) and (3) apply equally to Units 1 and 2. Change (2) applies only to Unit 1. The August 19, 1986 letter did not change the Technical Specifications and thus was not noticed.

Date of issuance: October 21, 1986.

Effective date: October 21, 1986.

Amendment Nos.: 10, 8.

Facility Operating Licenses Nos. DPR-80 and DPR-82: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** July 30, 1986 (51 FR 27286).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated October 21, 1986.

No significant hazards consideration comments received: No

Local Public Document Room location: California Polytechnic State University Library, Documents and Maps Department, San Luis Obispo, California 93407.

Power Authority of the State of New York, Docket No. 50–333, James A. FitzPatrick Nuclear Power Plant, Oswego County, New York

Date of application for amendment: July 24, 1986.

Brief description of amendment: The amendment changes Technical Specifications 5.5.B concerning the criterion for storage of nuclear fuel in the spent fuel pool.

Date of issuance: October 24, 1986.

Effective date: October 24, 1986.

Amendment No.: 101.

Facility Operating License No. DPR–59. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** August 27, 1986 (51 FR 30580).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 24, 1986.

No significant hazards consideration comments received: No.

Local Public Document Room location: Penfield Library, State University College of Oswego, Oswego, New York.

Power Authority of The State of New York, Docket No. 50–286, Indian Point Unit No. 3, Westchester County, New York

Date of application for amendment: June 4, 1986.

Brief description of amendment: The amendment revises the Technical Specifications to include a provision for utilizing a temporary closure plate in place of the equipment door during refueling operations.

Date of issuance: October 7, 1986.

Effective date: October 7, 1986.

Amendment No.: 69.

Facilities Operating License No. DPR–64: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** August 13, 1986 (51 FR 29011). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 7, 1986.

No significant hazards consideration comments received: No.

Local Public Document Room location: White Plains Public Library, 100 Martine Avenue, White Plains, New York, 10610.

Rochester Gas and Electric Corporation, Docket No. 50–244, R.E. Ginna Nuclear Power Plant, Wayne County, New York

Date of application for amendment: July 19, 1985.

Brief description of amendment: The amendment clarifies the requirement in the Technical Specifications related to the record retention period for the quality assurance activities.

Date of issuance: October 22, 1986.

Effective date: October 22, 1986.

Amendment No.: 20.

Facility Operating License No. DPR–18: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** September 25, 1985 (50 FR 38922).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 22, 1986. No significant hazards consideration comments received: No.

Local Public Document Room location: Rochester Public Library, 115 South Avenue, Rochester, New York 14610.

NRC Project Director: George E. Lear, Director.

Washington Public Power Supply System, Docket No. 50–397, WNP–2, Richland, Washington

Date of amendment request: March 20, 1986.

Brief description of amendment: This amendment revised the WNP–2 Operating License, NPF–21, by modifying paragraph 2.E which governs the requirements for a Physical Security Plan, Guard Training and Qualification and a Safeguards Contingency Plan. Specifically, the amendment deletes the commitment to use a redundant detection system to the plant protected area intrusion detection system.

Date of issuance: October 16, 1986.

Effective date: October 16, 1986.

Amendment No: 29.

Facility Operating License No. NPF–21: Amendment revised the license.

Date of initial notice in the **Federal Register:** August 27,1986 (51 FR 30584) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 16, 1986.

No significant hazards consideration comments received: No.

Local Public Document Room location: Richland Public Library, Swift and Northgate Streets, Richland, Washington 99352.

NOTICE OF ISSUANCE OF AMENDMENT TO FACILITY OPERATING LICENSE AND FINAL DETERMINATION OF NO SIGNIFICANT HAZARDS CONSIDERATION AND OPPORTUNITY FOR HEARING (EXIGENT OR EMERGENCY CIRCUMSTANCES).

During the period since publication of the last bi-weekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Because of exigent or emergency circumstances associated with the date the amendment was needed, there was not time for the Commission to publish, for public comment before issuance, its usual 30-day Notice of Consideration of Issuance of Amendment and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing. For exigent circumstances, the Commission has either issued a **Federal Register** notice providing opportunity for public comment or has used local media to provide notice to the public in the area surrounding a licensee's facility of the licensee's application and of the Commission's proposed determination of no significant hazards consideration. The Commission has provided a reasonable opportunity for the public to comment, using its best efforts to make available to the public means of communication for the public to respond quickly, and in the case of telephone comments, the comments have been recorded or transcribed as appropriate and the licensee has been informed of the public comments.

In circumstances where failure to act in a timely way would have resulted, for example, in derating or shutdown of a nuclear power plant or in prevention of either resumption of operation or of increase in power output up to the plant's licensed power level, the Commission may not have had an opportunity to provide for public comment on its no significant hazards determination. In such case, the license amendment has been issued without opportunity for comment. If there has been some time for public comment but less than 30 days, the Commission may

provide an opportunity for public comment. If comments have been requested, it is so stated. In either event, the State has been consulted by telephone whenever possible.

Under its regulations, the Commission may issue and make an amendment immediately effective, notwithstanding the pendency before it of a request for a hearing from any person, in advance of the holding and completion of any required hearing, where it has determined that no significant hazards consideration is involved.

The Commission has applied the standards of 10 CFR 50.92 and has made a final determination that the amendment involves no significant hazards consideration. The basis for this determination is contained in the documents related to this action. Accordingly, the amendments have been issued and made effective as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated. For further details with respect to the action see (1) the application for amendment, (2) the amendment to Facility Operating License, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment, as indicated. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, and at the local public document room for the particular facility involved.

A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Licensing.

The Commission is also offering an opportunity for a hearing with respect to the issuance of the amendments. By December 5, 1986, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

Since the Commission has made a final determination that the amendment involves no significant hazards consideration, if a hearing is requested, it will not stay the effectiveness of the amendment. Any hearing held would take place while the amendment is in effect.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at (800) 325–6000 (in Missouri (800) 342–6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to *(Project Director):* petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, Bethesda, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board, that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

Mississippi Power & Light Company, Middle South Energy, Inc., South Mississippi Electric Power Association, Docket No. 50–416, Grand Gulf Nuclear Station, Unit 1, Claiborne County, Mississippi

Date of application for amendment: October 3, 1986.

Brief description of amendment: This amendment provides temporary changes to the Technical Specifications (TSs) for secondary containment isolation valves and associated actuation instrumentation, secondary containment integrity, and the standby gas treatment system. The amendment is effective October 3, 1986 through October 10, 1986 while the plant is in the refueling mode. The changes will allow certain secondary containment equipment to be inoperable during removal and re-

installation of control rods in defueled core cells so that work on this equipment can continue while removal and reinstallation of control rods is done. Two compensatory measures will be in effect when this temporary change to TSs is used: (1) Administrative controls will be implemented for temporarily closing portions of secondary containment that are open for ongoing work; and (2) the height of control rods over irradiated fuel assemblies will be minimized during control rod removal and re-installation.

Date of issuance: October 22, 1986.

Effective date: October 3, 1986.

Amendment No.: 22.

Facility Operating License No. NPF-29: Amendment revised Technical Specifications Public comments requested as to proposed no significant hazards consideration: No.

The Commission's related evaluation of the amendment, consultation with the State of Mississippi, and final no significant hazards considerations determination are contained in a Safety Evaluation dated October 22, 1986.

Attorney for licensee: Nicholas S. Reynolds, Esquire, Bishop, Liberman, Cook, Purcell and Reynolds, 1200 17th Street, NW., Washington, DC 20036.

Local Public Document Room location: Hinds Junior College, McLendon Library, Raymond, Mississippi 39154.

NRC Project Director: Walter R. Butler.

Dated at Bethesda, Maryland this 29th day of October, 1986.

For the Nuclear Regulatory Commission.

Frank J. Miraglia,

Director, Division of PWR Licensing-B, Office of Nuclear Reactor Regulation.

[FR Doc. 86-24933 Filed 11-4-86; 8:45 am]

BILLING CODE 7590-01-M

POSTAL RATE COMMISSION

[Docket No. A87-2; Order No. 714]

Vanna, Ga.; Notice and Order Accepting Appeal and Establishing Procedural Schedule

Issued: October 29, 1986.

Before Commissioners: Janet D. Steiger, Chairman; Bonnie Guiton, Vice-Chairman; John W. Crutcher; Henry R. Folsom; Patti Birge Tyson.

Docket No.: A87-2
Name of Affected Post Office: Vanna, Georgia 30672
Name (s) of Petitioner(s): Mr. & Mrs. Harris
Type of Determination: Closing
Date of Filing of Appeal Papers: October 23, 1986

Categories of Issues Apparently Raised:

1. Effect on the community [39 U.S.C. 404(b)(2)(A)].
2. Effect on postal services [39 U.S.C. 404(b)(2)(C)].
3. Economic savings [39 U.S.C. 404(b)(2)(D)].

Other legal issues may be disclosed by the record when it is filed; or conversely, the determination made by the Postal Service may be found to dispose of one or more of these issues.

In the interest of expedition, in light of the 120-day decision schedule [39 U.S.C. 404(b)(5)], the Commission reserves the right to request of the Postal Service memoranda of law on any appropriate issue. If requested, such memoranda will be due 20 days from the issuance of the request; a copy shall be served on the Petitioners. In a brief or motion to dismiss or affirm, the Postal Service may incorporate by reference any such memoranda previously filed.

The Commission orders:

(A) The record in this appeal shall be filed on or before November 7, 1986.

(B) The Secretary shall publish this Notice and Order and Procedural Schedule in the **Federal Register.**

By the Commission.

Charles L. Clapp,

Secretary.

Appendix

Vanna, Georgia 30672, Oct. 23, 1986—Filing of Petition.
Oct. 29, 1986—Notice and Order of Filing of Appeal.
Nov. 17, 1986—Last day of filing of petitions to intervene [*see* 39 CFR 3001.111 (b)].
Nov. 28, 1986—Petitioners' Participant Statement or Initial Brief [*see* 39 CFR 3001.115 (a) and (b)].
Dec. 18, 1986—Postal Service Answering Brief [*see* 39 CFR 3001.115(c)].
Jan. 2, 1987—Petitioners' Reply Brief should petitioners choose to file on [*see* 39 CFR 3001.115(d)].
Jan. 9, 1987—Deadline for motions by any party requesting oral argument. The Commission will schedule oral argument only when it is a necessary addition to the written filings [see 39 CFR 3001.116].
Feb. 20, 1987—Expiration of 120-day decisional schedule [see 39 U.S.C. 404(b)(5)].

[FR Doc. 86-24964 Filed 11-4-86; 8:45 am]

BILLING CODE 7715-01-M

SECURITIES AND EXCHANGE COMMISSION

Forms Under Review of Office of Management and Budget

Agency clearance officer: Kenneth A. Fogash, (202) 272-2142.

Upon written request copy available from: Securities and Exchange Commission, Office of Consumer Affairs, Washington, DC 20549.

Extension

Rule 17a-2
No. 270-189

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission has submitted for extension of OMB approval Rule 17a-2 (17 CFR 240.17a-2) under the Securities Exchange Act of 1934 (15 U.S.C. 78 *et seq.*) which requires the manager of an underwriting syndicate to retain in a separate file certain information relating to stabilizing purchases of a security being distributed. The potential affected persons are approximately 500 managing underwriters per year.

Submit comments to OMB Desk Officer: Ms. Sheri Fox, (202) 395-3785, Office of Information and Regulatory Affairs, Room 3235 NEOB, Washington, DC 20503.

Jonathan G. Katz,

Secretary.

October 29, 1986.

[FR Doc. 86-24976 Filed 11-4-86; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Advisory Circular Detonation Testing in Reciprocating Aircraft Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Draft Advisory Circular (AC) Availability and Request for Comments.

SUMMARY: This draft AC (No. 33.47-1) is intended to provide guidance for demonstrating compliance with the requirements of Part 33 of the Federal Aviation Regulations (FAR's) relating to detonation testing for reciprocating aircraft engines.

DATE: Comments must be received on or before January 7, 1987.

ADDRESS: Send all comments on draft AC No. 33.47-1 to: Federal Aviation Administration, Aircraft Certification Division, 12 New England Executive Park, Burlington, Massachusetts 01803.

FOR FURTHER INFORMATION CONTACT: George Mulcahy, Aerospace Engineer, Engine and Propeller Standards Staff,

Aircraft Certification Division, Federal Aviation Administration, 12 New England Executive Park, Burlington, Massachusetts 01803.

SUPPLEMENTARY INFORMATION: Any person may obtain a copy of this draft AC by writing to: Federal Aviation Administration, Aircraft Certification Division, 12 New England Executive Park, Burlington, Massachusetts 01803, telephone 617–273–7077.

Background

This AC, relating to engine certification substantiation procedures, is intended to assist in establishing uniformity in the certification process and in the pre-certification test planning by defining certain terms and procedures which may be of assistance in meeting the related regulations.

Comments Invited

Interested parties are invited to submit comments on this draft AC. The draft AC and comments received may be inspected at the Aircraft Certification Division, Room 408, 12 New England Executive Park, Burlington Massachusetts, between the hours of 8:00 a.m. and 4:30 p.m. on weekdays, except Federal holidays.

Issued in Burlington, Massachusetts, on October 22, 1986.

William H. Williams, Jr.,

Acting Director, New England Region.

[FR Doc. 86–24944 Filed 11–4–86; 8:45 am]

BILLING CODE 4910–13–M

[Summary Notice No. PE–86–18]

Exemption Petitions; Summary and Dispositions

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provision governing the application, processing, and disposition of petitions for exemption (14 CFR Part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR Chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATE: Comments on petitions received must identify the petition docket number involved and must be received on or before: Novermber 26, 1986.

ADDRESS: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn. Rules Docket (AGC–204), Petition Docket No. ———. 800 Independence Avenue, SW., Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC–204), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue,. SW., Washington, DC 20591; telephone (202) 267–3132.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, DC, on October 31, 1986.

John H. Cassady,

Assistant Chief Counsel, Regulations and Enforcement Division.

PETITIONS FOR EXEMPTION

Docket No.	Petitioner	Regulations affected	Description of relief sought
24951	Jungle Aviation and Radio Service, Inc.	14 CFR Parts 91 and 125	To allow petitioner to operate its DC–3, N13JA, at a takeoff weight of 110 percent of its authorized maximum certificated takeoff weight (29,600 pounds) to fly food and supplies to areas in Africa.
22436	American Airlines	14 CFR 121.351(a) and 121.99	Extension of Exemption No. 3493 to allow petitioner to operate its turbojet aircraft on routes in the New York oceanic control area between the east coast of the United States and Bermuda with one high frequency communications system and without maintaining two-way radio communication between each aircraft and the dispatch office.
24304	Omniflight Offshore, Inc.	14 CFR 43.3(g)	Extension of Exemption No. 4259 to allow petitioner's pilots to remove, check, and reinstall magnetic chip detector plugs installed in Allison 250C series turbine engines, transmissions, and tail rotor gearboxes of the Bell 206 helicopter.
20816	Zephyrhills Parachute Center	14 CFR 91.47	To allow petitioner to transport 40 parachutists in its DC–3/C47 aircraft.
25035	Evergreen International Airlines, Inc.	14 CFR 121.503 (a), (b), and (d)	To allow petitioner to schedule a pilot to fly 10 hours in any 24-hour period and to schedule a crewmember for 150 hours of duty in any 30 consecutive days.
25087	Hughes Aircraft Company	14 CFR 91.213 and 91.31	To allow petitioner to operate its NA 265 aircraft with one pilot without a second in command for the conduct of ferry flights, aircraft flight tests, and airborne equipment evaluations where no persons or property other than as necessary for the operation are carried.
16787	Petroleum Helicopters, Inc.	14 CFR 133.1 and 133.45(a)(3)	Petition to reinstate Exemption No. 2534 to allow petitioner to use its Bell 212, 214ST, and Puma SA–330 helicopters to lower and hoist harbor pilots, on an external hoist, to and from ships at sea.
18104	Flight Safety International	14 CFR 61.57(a)(1)	Extension of Exemption No. 2592E to allow petitioner to administer the Biennial Flight Review in approved visual, phase I, or phase II simulators.
22457	American Arilines	14 CFR 121.351(a) and 121.99	Extension of Exemption No. 3462 to allow petitioner to operate its turbojet aircraft in extended overwater operations in the Gulf of Mexico with one high frequency communications system and one long range navigational system.
028CE	Beech Aircraft Corp.	14 CFR § 23.2	A one-year temporary exemption from the effective date of Amendment 23–32 which states that all airplanes manufactured after December 12, 1985 must meet requirements of Section 23.785(g) relative to restraint systems on side-facing seats.
012NM	United Airlines	14 CFR 25.1305(d)(3)	Relieve petitioner from the requirement to install and maintain rotor unbalance indicators on its 737–300 aircraft.
24187	Florida Department of Law Enforcement	14 CFR 91.79(c), 91.109(a)	To allow petitioner to be exempted from the FAR 91.79(c), and 91.109(a) to conduct law enforcement air support.

PETITIONS FOR EXEMPTION

Docket No.	Petitioner	Regulations affected	Description of relief sought disposition
25065	Z Air, Inc.	14 CFR 61.63(d)(2) and (3), 61.157(d)(1), and 121.407(a)(1)(i).	To allow students of the petitioner, who are applicants for a type rating to be added to any grade of pilot certificate, to complete a portion of that practical test in an airplane simulator. *Granted September 24, 1986.*
12468	Petroleum Helicopters, Inc.	14 CFR 43.3(g)	Extension of Exemption No. 1821 to allow petitioner to have its appropriately trained and certificated pilots remove, check, and reinstall magnetic chip detector plugs in the Aerospatiale AS-355, Bell 206, and Bolkow 105 helicopters along with their respective transmissions and tail rotor gearbox plugs. *Granted September 24, 1986.*
25028	Executive Airlines and Charter Services, Inc.	14 CFR 121.411 (a)(1), (a)(2), (a)(3), and (a)(6), and 121.413 (b) and (c).	To allow petitioner to utilize pilot flight instructors from Aeroformation and Aerospatiale [G.I.E. Avions de Transport Regional (ATR)] for the purpose of training petitioner's initial cadre of pilots in the Aerospatiale 42 (ATR-42) airplane in Toulouse, France, without holding appropriate U.S. certificates and ratings and without meeting all of the applicable training requirements of Subpart N of Part 121 of the FAR. *Granted September 10, 1986.*
2445	American Airlines	14 CFR Part 121, Appendix H	Extension of Exemption No. 4313 to allow petitioner the continued use of its Interim Simulator Upgrade Plan without meeting the milestone dates of Condition No. 3. *Granted August 29, 1986.*
24941	Perris Valley Skydiving Society, Inc.	14 CFR 105.43	Extension of Exemption No. 4684 to allow foreign parachutists relief from the equipment and packing requirements of § 105.43. *Granted August 27, 1986.*
25041	Presidential Airways	14 CFR 121.411(a) (2) and (3) and 121.413 (b) and (c).	To allow petitioner to utilize certain highly qualified British Aerospace (BAe) pilot flight instructors for the purpose of training petitioner's initial cadre of pilots in the BAe 146 type airplane in the United Kingdom and/or the United States without the BAe pilots meeting all of the applicable training requirements of Subpart N of Part 121 of the FAR. *Granted July 29, 1986.*
25017	Systems International Airways	14 CFR 121.411(a) (2) and (4)	To allow petitioner to use Mr. James G. Beekman as a pilot flight instructor for the purpose of training petitioner's initial cadre of pilots in the Martin 404 (M-404) airplane without Mr. Beekman meeting all of the applicable training requirements. *Partially Granted September 10, 1986.*
24537	Robert A. Evers	14 CFR 61.161(b)	To allow petitioner to apply for an airline transport pilot certificate with a rotorcraft category rating without meeting the requirement of at least 1,200 hours of flight time within the preceding 8 years. *Granted October 3, 1986.*
22633	Virgin Islands Seaplane Shuttle, Inc.	14 CFR 135.175(a)	Extension of Exemption No. 3487 to allow petitioner to conduct day visual flight rule (VFR) flights in large multiengine airplanes without approved airborne weather radar equipment installed. *Granted October 14, 1986.*
25024	University of Illinois Institute of Aviation	14 CFR Part 141, Appendixes A, C, D, F, and H.	To allow petitioner to train certain of its students to a performance standard without meeting the prescribed minimum flight time requirements. *Granted October 3, 1986.*
23492	United States Hang Gliding Association, Inc.	14 CFR 103.1 (a) and (b)	To allow the definition of "ultralight vehicle" to apply to unpowered vehicles of not more than 155 pounds weight used to carry two occupants for the purpose of sport and recreation, including practicing for, or participating in, two-place competition, or flight instruction conducted by petitioner's certified instructors. *Granted October 9, 1986.*

Dispositions of Petitions for Exemption

Docket No.	Petitioner	Regulations affected	Description of relief sought disposition
24623	Pacific Coast Airlines	14 CFR §§ 135.89 & 135.157	To allow petitioner to remove the oxygen system in petitioner's Handley Page HP-137 Jetstream Mk.1 Aircraft and configure the aircraft to comply with 14 CFR Part 121, for turbine aircraft certified up to 25,000 feet. *DENIED 10/21/86.*
25097	Aerotours Dominicana S.A.	14 CFR Section 91.307	To allow operation in the United States, under a service to small communities exemption, of specified two-engine airplanes identified by registration and serial number, that have not been shown to comply with the applicable operating noise limits as follows: Until not later than January 1, 1988: 1 "Stage 1 airplane". *GRANTED 10/10/84.*
21635	Airborne Express Inc.	15 CFR 91.307	To amend Exemption No. 3196f to add 2 aircraft. The present exemption allows operation in the United States, under a service to small communities exemption, of specified two-engine airplanes, identified by registration and serial number, that have not been shown to comply with the applicable operating noise limits as follows: Until not later than January 1, 1988: 15 DC-9 aircraft. *Granted 10/28/84.*
009NM	De Haviland Aircraft of Canada	14 CFR 25.807(c)(1)	To permit type certification of the DHC-8 series 100 aircraft configured with a passenger configuration of 40 seats while still retaining one Type II and one Type III emergency exit on each side of the fuselage. *Granted 10/24/86.*

[FR Doc. 86-24999 Filed 11-4-86; 8:45 am]
BILLING CODE 4910-13-M-M

Radio Technical Commission for Aeronautics (RTCA); Executive Committee Meeting With the International Associates

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. App. I) notice is hereby given of a meeting of the RTCA Executive Committee with the International Associates to be held on November 17, 1986, at the Marriott Crystal Gateway Hotel, Salon K, 1700 Jefferson Davis Highway, Arlington, Virginia, commencing at 2 p.m.

The Agenda for this meeting is as follows: (1) Chairman's Opening Remarks and Introductions; (2) Approval of Minutes of September 19, 1986, Meeting; (3) Executive Director's Report on Administrative Activities; (4) Special Committee Activities Report for September–October 1986; (5) Consideration of Proposals to Establish New Special Committees; (6) Consideration for Approval of Special Committee Reports: (a) Special Committee 137 Report, "Minimum Operational System Performance Standards for Area Navigation Equipment Using Loran-C Inputs," (b) Special Committee 153 Report, "Minimum Operational Performance Standards for Airborne ILS Localizer Receiving Equipment Operating Within the Radio Frequency Range of 108–112 MHz," (c) Special Committee 153 Report, "Minimum Operational Performance Standards for VOR Receiving

Equipment Operating Within the Radio Frequency Range of 108–117.95 MHz"; (7) Report on EUROCAE Activities; (8) Comments and Reports by International Associates Present; (9) Other Business; and (10) Date and Place of Next Meeting.

Attendance is open to the interested public but limited to space available. With the approval of the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, One McPherson Square, 1425 K Street, NW., Suite 500, Washington, DC 20005; (202) 682–0266. Any member of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on October 24, 1986.

Wendie F. Chapman,

Designated Officer.

[FR Doc. 86–24943 Filed 11–4–86; 8:45 am]

BILLING CODE 4910–13–M

Meeting To Allocate High Density Traffic Airport Slots by Lottery

AGENCY: Federal Aviation Administration (FAA), Department of Transportation, (DOT).

ACTION: Notice of meeting to allocate High Density Traffic Airport slots by lottery.

SUMMARY: In December 1985 the Secretary of Transportation issued a rule establishing procedures for the allocation and transfer of operating slots at the four airports designated as high density traffic airports: Kennedy International, LaGuardia, O'Hare International, and Washington National Airports. The rule provides that unallocated and returned slots will be distributed by lottery. Special Federal Aviation Regulation (SFAR) No. 48, issued by the Secretary in March 1986, provides for two special lotteries to distribute up to 5 percent of air carrier slots at LaGuardia, O'Hare, and National airports.

This notice announces a meeting to conduct 3 lotteries: (1) the second special lottery under SFAR No. 48, for allocation of air carrier slots at LaGuardia, O'Hare, and National airports, (2) a lottery of air carrier slots which have become available at any of the four airports since March 27, 1986, and (3) a lottery of commuter slots which have become available at any of the four airports since April 29, 1986.

DATES:

Meeting: The meeting will be held on Tuesday, December 9, 1986. The air carrier slot lotteries will begin at 9:00 a.m. The commuter slot lottery will begin at 1:30 p.m.

Requests to participate: Notice of intent to participate must be received by 5:00 p.m. on the following dates: Incumbent operators: December 5, 1986; new entrant operators: November 24, 1986.

ADDRESSES: The meeting will be held at FAA Headquarters, Third Floor Auditorium, 800 Independence Avenue, SW., Washington, DC.

Requests to participate in the lottery should be submitted to: Office of the Chief Counsel, Slot Administration Office, AGC–200, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT:

David L. Bennett, Manager, Airspace and Air, Traffic Law Branch, AGC–230, Telephone: (202) 267–3491

Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

SUPPLEMENTARY INFORMATION:

Availability of Document

Any person may obtain a copy of Amendment No. 93–49, "High Density Traffic Airports; Slot Allocation and Transfer Methods," and SFAR No. 48, "Special Slot Withdrawal and Reallocation Procedures," by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Information Center, APA–430, 800 Independence Avenue, SW., Washington, DC 20591; or by calling (202) 426–8058. Communications must identify the amendment number of the document.

Background

On December 16, 1985, the Department of Transportation issued Amendment No. 93–49, "High Density Traffic Airports; Slot Allocation and Transfer Methods; Final Rule" (50 FR 52180, December 20, 1985), adding new Subpart S to Part 93 of the Federal Aviation Regulations (FAR), 14 CFR Part 93, Subpart S. The rule established procedures for the allocation and transfer of operating slots at the four airports designated as high density traffic airports under the High Density Rule, 14 CFR Part 93, Subpart K: Kennedy International, LaGuardia, O'Hare International, and Washington National Airports. The rule provides that unallocated and returned slots will be distributed by lottery.

On March 7, 1986, the Department issued Special Federal Aviation Regulations 48 (51 FR 8632, March 12, 1986) which announced the procedures for lotteries to reallocate certain air carrier slots at LaGuardia, O'Hare International, and Washington National Airports. A lottery to allocate up to five percent of the slots at the three airports was held on March 27, 1986. The SFAR states that a second lottery, to distribute slots from the special lottery pool which are available because they were not selected on March 27 or because they were selected and returned for nonuse, will be held by December 15, 1986. This lottery fulfills that provision.

A small number of air carrier slots not covered by SFAR No. 48 have become available since March 27. These slots will be allocated by a separate lottery conducted under Subpart S procedures, immediately following the secondary lottery under SFAR No. 48. This lottery will also allocate any slots not selected in the SFAR 48 secondary lottery and not designated for return to a particular incumbent carrier (as a result of having been surrendered by that carrier in the March 26 withdrawal lottery conducted under SFAR No. 48, § 4).

On April 29, 1986, a lottery of commuter slots at all four high density traffic airports was conducted under the provisions of Subpart S. Since that time a few slots have again become available, through operation of the use-or-lose provisions of 14 CFR 93.227 and through the failure of some carriers to use the slots obtained in the April 29 lottery within the required time. The final rule issued in December states that lotteries will be held when sufficient slots were available for general distribution, but normally not more than twice each year. In consideration of the availability of slots and the fact that no lottery has been held since April 1986, a lottery of commuter slots will be held on December 9.

On June 10, the Department issued an amendment to Subpart S which, among other changes, made certain minor modifications to the Subaprt S lottery procedures (51 FR 21708, June 13, 1986). Specifically, the amendment increases the set-aside of slots for new entrants from 15% to 25%; requires that operators withing to participate in the lottery notify the FAA of any common control or ownership with other carriers; prohibits participation by carriers which drew slots in the previous lottery and failed to use them; and provides that unselected slots from the new entrant pool will be distributed to incumbents.

These changes will be incorporated in the general lotteries on December 9. However, the special air carrier slot lottery conducted under SFAR No. 48 is not affected.

Secondary Lottery Under SFAR 48

Time: 9:00 a.m., December 9.

Requests to Participate:

For each of the three airports covered by SFAR No. 48, each U.S. air carrier operating at the airport with fewer than eight total slots (including all international or domestic, commuter or air carrier slots), and desiring to be included in the secondary lottery to obtain slots under SFAR NO. 48, must notify the Office of the Chief Counsel, Slot Administration, AGC–200, 800 Independence Avenue, SW., Washington, DC 20591, that it desires to participate in the reallocation lottery for that airport. The notification must be in writing and must be submitted in duplicate by 5:00 p.m. Eastern Standard Time on December 5. The notification must include a certified statement signed by an officer of the operator indicating that the operator operates or has contracted for sufficient aircraft having a miximum seating capacity of 56 or more to use the slots to be obtained and that the operator has bona fide plans to use all requested slots within the timeframe described in Section 6 of SFAR No. 48.

Any U.S. new entrant air carrier wishing to initiate scheduled service at the airport shall be included in the lottery if it: (1) Has appropriate economic authority under Title IV of the Federal Aviation Act of 1958, as amended; (2) has, at the time of the lottery, FAA operating authority under Part 121; and (3) notifies the Office of the Chief Counsel, Slot Administation Office, AGC–200, 800 Independence Avenue, SW., Washington, DC 20591, that it desires to participate in the lottery. The notification must be in writing and must be submitted in duplicate by 5:00 p.m. Eastern Standard Time on November 24. The additional notification time for new entrants is needed to confirm the certification status of applicants. The notification must include a certified statement signed by an officer of the operator indicating that the operator operates or has contracted for sufficient aircraft having a maximum certificated passenger seating capacity of 56 or more to use the slots to be obtained and that the operator has bona fide plans to use all requested slots within the timeframe described in section 6 of SFAR No. 48.

A carrier which obtained slots in the lottery on March 27 shall *not* be eligible to participate in this secondary lottery if any of the following situations applies:

(1) The carrier failed to use the slots in accordance with Section 6 of SFAR No. 48 or an exemption from that section issued by the FAA.

(2) The carrier sold, or transferred for consideration other than one or more slots at the same airport, the slots selected in the lottery.

(3) The carrier leased those slots on a long-term basis (more than one year), which is the equivalent of a sale for the purposes of determining whether a carrier made bona fide use of slots obtained in the lottery as a new entrant.

Carriers obtaining slots under the SFAR 48 lottery are reminded of the use requirements for those slots contained in SFAR No. 48, particularly section 6. Among those requirements are the need for carriers obtaining slots to:

—Begin to use them between 90 and 180 days after the lottery.
—Give the incumbent carrier 90 days notice of intent to operate.
—Use the slots only in scheduled domestic passenger operations.
—Comply with the 65% slot use requirements once operations are initiated.
—Use the slots only with aircraft having 56 or more seats for 90 days before transfer restrictions are removed.

Carriers are expected to be familiar with SFAR 48 requirements and to adhere strictly to those requirements.

Lottery Procedures:

Air carrier slots will be distributed in accordance with the procedures established in SFAR No. 48:

(a) Random drawings shall be held to determine the order of slot selection by the eligible carriers.

(b) An operator may select up to two slots available at the airport during each selection sequence, except that new entrant carriers may select up to four slots, if available, in the first sequence. (See limitation in paragraph (d) below).

(c) At the lottery, each operator must make its selection within 5 minutes after being called or it shall lose its turn. If capacity still remains after each operator has had an opportunity to select slots, the allocation sequence will be repeated in the same order.

(d) No carrier may select more than eight slots under SFAR No. 48 or select any slots that would result in it having a total of more than eight slots at any one airport, reduced by:

(1) Each slot lost under § 93.227(a) since December 16, 1985; and

(2) Each non-lottery slot transferred for consideration other than one or more slots at the same airport since March 27, 1986. The transfer of non-lottery slots does not affect eligibility to participate in the secondary lottery. However, the number of slots which may be selected will be reduced by slots voluntarily relinquished since the March lottery. It would be unfair to permit a limited incumbent carrier that sold its existing slots, after acquiring lottery slots, to continue to compete with new entrant carriers in the secondary lottery for no purpose other than to obtain slots to replace the slots sold.

(e) If all eligible carriers decide not to select additional slots or have selected their maximum number of slots, the lottery at that airport will end and the remaining slots will be returned to the carriers from which they were withdrawn under Section 4 of SFAR No. 48.

GENERAL SLOT LOTTERIES UNDER 14 CFR 93.225

Time: Air carrier lottery: Immediately after completion of the SFAR 48 lottery.

Commuter operator lottery: 1:30 p.m., December 9.

Requests to Participate:

For each of the high density airports, each air carrier and commuter operator operating at that airport will be included in the appropriate lottery for the airport upon written notification to the FAA by 5:00 p.m. on Friday, December 5, of the operator's desire to participate.

Any air carrier or commuter operator which (i) is not operating at the airport and (ii) has not failed to operate slots obtained in the previous lottery, but wishes to initiate service at the airport, shall be included in the lottery if that operator notifies the Office of the Chief Counsel in writing. To be eligible to participate, the operator must hold appropriate economic authority under Title IV of the Federal Aviation Act of 1958, as amended, and must hold or have made substantial progress in obtaining FAA operating authority under Part 135 or Part 121 of Title 14 of the Code of Federal Regulations. "Substantial progress" for this purpose is defined in 14 CFR § 93.225(g). The notification must also include a statement as to whether there is any common ownership or control of, by, or with any other carrier as defined in 14 CFR 93.213(c). The notification must be in duplicate and must be received by 5:00 p.m. on Monday, November 24. The additional notification time for new entrants is needed to confirm the certification status of applicants.

All notifications of intent to

participate in the lottery must be submitted to the address listed under "ADDRESSES" above.

Lottery Procedures:

A list of the air carrier and commuter slots to be allocated will be prepared by the FAA and will be available by December 5, 1986. Slots not allocated in the SFAR 48 lottery will be included in this lottery if they were not slots subject to withdrawal from incumbent carriers under section 4 of SFAR No. 48. The list may be obtained by contacting the person listed under "FOR FURTHER INFORMATION CONTACT." A separate lottery will be conducted for slots at each airport.

Slots will be allocated in accordance with the lottery procedures set forth in 14 CFR Subpart S, 93.225. The procedures for the lottery at each airport may be summarized as follows:

1. A random lottery will be held to determine the order of slot selection.

2. During the first selection sequence, 25 percent of the slots available at each airport but no fewer than two slots shall be reserved for selection by new entrant carriers.

3. Each carrier will make its selection in the order determined in the initial sequence lottery, except that only new entrant carriers will be permitted to make selections until the percentage of slots set aside for new entrants is selected. The normal sequence will resume at that time, beginning with the first incumbent carrier passed over during the new entrant selections.

4. An operator may select any two slots available at the airport during each selection sequence, except that new entrant carriers may select four slots, if available, in the first sequence.

5. Each operator must make its selection within 5 minutes after being called or it shall lose its turn. If capacity remains after each operator has had an opportunity to select slots, the allocation sequence will be repeated in the same order.

Public Process

The meeting is open to the public and all interested persons are invited to attend. All lotteries will be held at FAA Headquarters in the Third Floor Auditorium.

Issued in Washington, DC on October 31, 1986.

E. Tazewell Ellett,

Chief Counsel.

[FR Doc. 86-25000 Filed 11-4-86; 8:45 am]

BILLING CODE 4910-13-M

Federal Railroad Administration

[FRA Waiver Petition Docket No., HS-86-18]

Petition for Exemption From the Hours of Service Act; Amador Central Railroad Co.

In accordance with 49 CFR 211.9 and 211.41, notice is hereby given that the Amador Central Railroad Company (ACR) has petitioned the Federal Railroad Administration (FRA) for a permanent waiver of compliance with the provisions of the Hours of Service Act (83 Stat. 464, Pub. L. 91-169, 45 U.S.C. 64a(e)).

The Hours of Service Act currently makes it unlawful for a railroad to require specified employees to remain on duty for a period in excess of 12 hours. However, the Hours of Service Act contains a provision that permits a railroad which employs no more than 15 employees who are subject to the statute to seek an exemption from the 12 hour limitation.

The ACR seeks a continuation of a previously issued exemption so that it can permit certain employees to remain on duty not more than 16 hours in any 24-hour period. The petitioner indicates that granting the exemption is in the public interest and will not adversely affect safety. Additionaly, the petitioner asserts that it employes not more than 15 employees and has demonstrated good cause for granting this exemption.

Interested persons are invited to participate in these proceedings by submitting written views and comments. FRA has not scheduled an opportunity for oral comment since the facts do not appear to warrant it. Communications concerning the proceedings should identify this docket number and must be submitted in triplicate to the Docket Clerk, Office of Chief Counsel, Federal Railroad Administration, Nassif Building, 400 Seventh Street SW., Washington, DC 20590.

Communications received before December 20, 1986, will be considered by FRA before final action is taken. Comments received after that will be considered as far as practicable. All comments received will be available for examination both before and after the closing date for comments, during regular business hours (9 a.m.-5 p.m.) in Room 8201, Nassif Building, 400 Seventh Street SW., Washington, DC 20590.

Issued in Washington, DC, on October 30, 1986.

J.W. Walsh,

Associate Administrator for Safety.

[FR Doc. 86-25014 Filed 11-4-86; 8:45 am]

BILLING CODE 4910-06-M

Research and Special Programs Administration

[Docket No. IRA-37]

Citizens Against Nuclear Trucking; Application for Inconsistency Ruling; Correction

AGENCY: Research and Special Programs Administration, DOT.

ACTION: Public Notice and Invitation to Comment; Correctional

In FR Doc. 86-23624 beginning on page 37248 in the issue of Monday, October 20, 1986, make the following correction: on page 37249, in the first column, under "Addresses", change the last two sentences to read: "A copy of each comment and rebuttal comment also must be sent to Mr. Lindsay Audin, Technical Director, Citizens Against Nuclear Trucking, 21547 47th Ave., Bayside, NY 11591, and to TBTA's Counsel, Joseph Bulgatz, Esq., Triborough Bridge and Tunnel Authority, P.O. Box 35, New York, NY 10035, and that fact certified to at the time comment is submitted to the Dockets Branch. [The following Format i is suggested: "I hereby certify that copies of this comment have been sent to Messrs. Audin and Bulgatz at the addresses specified in the **Federal Register**."]"

Issued in Washington, DC on October 30, 1986.

Alan I. Roberts,

Director, Office of Hazardous Materials Transportation.

[FR Doc. 86-24982 Filed 11-4-86; 8:45 am]

BILLING CODE 4910-60-M

VETERANS ADMINISTRATION

Cost-of-Living Adjustments and Headstone or Marker Allowance Rate

AGENCY: Veterans Administration.

ACTION: Notice.

SUMMARY: As required by law the Veterans Administration (VA) is hereby giving notice of cost-of-living adjustments (COLAs) in certain benefit rates and income limitations. These COLAs affect the pension and parents' dependency and indemnity compensation (DIC) programs. These adjustments are based on the rise in the Consumer Price Index (CPI) during the one year period ending September 30, 1986. The VA is also giving notice of the maximum amount of reimbursement that may be paid for headstones or markers purchased in lieu of Government-furnished headstones or markers in

fiscal year 1987 which began on October 1, 1986.

DATES: These COLAs are effective December 1, 1986. The headstone or marker allowance rate is effective October 1, 1986.

FOR FURTHER INFORMATION CONTACT: Robert M. White, Chief, Regulations Staff, Compensation and Pension Service, Department of Veterans Benefits, (202) 233-3005.

SUPPLEMENTARY INFORMATION: Under the provisions of 38 U.S.C. 3112 and sec. 306 of Pub. L. 95-588 the VA is required to increase the benefit rates and income limitations in the pension and parents' DIC programs by the same percentage, and effective the same date, as increases in the benefit amounts payable under title II of the Social Security Act. The increased rates and income limitations are also required to be published in the Federal Register.

The Social Security Administration has announced that there will be a 1.3 percent cost-of-living increase in social security benefits effective December 1, 1986. Therefore, applying the same percentage, the following increased rates and income limitations for the VA's pension and parents' DIC programs will be effective December 1, 1986.

Improved Pension

Table 1

Maximum Annual rates

(1) Veterans permanently and totally disabled (38 U.S.C. 521). Veteran with no dependents, $5,963. Veteran with one dependent, $7,811. For each additional dependent, $1,012.

(2) Veterans in need of aid and attendance (38 U.S.C. 521). Veteran with no dependents, $9,539. Veteran with one dependent, $11,387. For each additional dependent, $1,012.

(3) Veterans who are housebound (38 U.S.C. 521). Veteran with no dependents, $7,288. Veteran with one dependent, $9,137. For each additional dependent, $1,012.

(4) Two veterans married to one another; combined rates (38 U.S.C. 521). Neither veteran in need of aid and attendance or housebound, $7,811. Either veteran in need of aid and attendance, $11,387. Both veterans in need of aid and attandance, $14,961. Either veteran housebound, $9,137. Both veterans housebound; $10,463. One veteran housebound and one veteran in need of aid and attendance, $12,712. For each dependent child, $1,012.

(5) Surviving spouse alone and with a child or children of the deceased veteran in custody of the surviving spouse (38 U.S.C. 541). Surviving spouse alone, $3,996. Surviving spouse and one child in his or her custody, $5,235. For additional child in his or her custody, $1,012.

(6) Surviving spouses in need of aid and attendance (38 U.S.C. 541). Surviving spouse alone, $6,392. Surviving spouse with one child in his or her custody, $7,628. For each additional child in his or her custody, $1,012.

(7) Surviving spouses who are housebound (38 U.S.C. 541). Surviving spouse alone, $4,885. Surviving spouse and one child in his or her custody, $6,121. For each additional child in his or her custody, $1,012.

(8) Surviving child alone (38 U.S.C. 542), $1,012.

Reduction for income. The rate payable is the applicable maximum rate minus the countable annual income of the eligible person. (38 U.S.C. 521, 541, and 542).

Mexican border period and World War I veterans. The applicable maximum annual rate payable to a Mexican border period or World War I veteran under this table shall be increased by $1,347. (38 U.S.C. 521(g)).

Parents' DIC

DIC (dependency and indemnity compensation) shall be paid monthly to parents of a deceased veteran in the following amounts. (38 U.S.C. 415).

Table 2

One parent. If there is only one parent the monthly rate of DIC paid to such parent shall be $279 reduced on the basis of the parent's annual income according to the following formula:

FOR EACH $1 OF ANNUAL INCOME

The $279 monthly rate shall be reduced by	Which is more than	But not more than
$0.00	0	$800
.08	$800	6,783

No DIC is payable under this table if annual income exceeds $6,783.

One Parent Who Has Remarried. If there is only one parent and the parent has remarried and is living with the parent's spouse, DIC shall be paid under table 2 or under table 4, whichever shall result in the greater benefit being paid to the veteran's parent. In the case of remarriage, the total combined annual income of the parent and the parent's spouse shall be counted in determining the monthly rate of DIC.

Two parents not living together. The rates in table 3 apply to (1) two parents who are not living together, or (2) an unmarried parent when both parents are living and the other parent has remarried. The monthly rate of DIC paid to each such parent shall be $199 reduced on the basis of each parent's annual income, according to the following formula:

Table 3

FOR EACH $1 OF ANNUAL INCOME

The $199 monthly rate shall be reduced by	Which is more than	But not more than
$0.00	0	$800
.05	$800	1,000
.07	1,000	1,200
.08	1,200	6,783

No DIC is payable under this table if annual income exceeds $6,783.

Two parents living together or remarried parents living with spouses. The rates in table 4 apply to each parent living with another parent; and each remarried parent, when both parents are alive. The monthly rate of DIC paid to such parents will be $188 reduced on the basis of the combined annual income of the two parents living together or the remarried parent or parents and spouse or spouses, as computed under the following formula:

Table 4

FOR EACH $1 OF ANNUAL INCOME

The $188 monthly rate shall be reduced by	Which is more than	But not more than
$0.00	0	$1,000
.03	$1,000	1,700
.04	1,700	2,200
.05	2,200	2,700
.06	2,700	3,200
.07	3,200	3,600
.08	3,600	9,120

No DIC is payable under this table if combined annual income exceeds $9,120.

The rates in this table are also applicable in the case of one surviving parent who has remarried, computed on the basis of the combined income of the parent and spouse, if this would be a greater benefit than that specified in table 2 for one parent.

Aid and attendance. The monthly rate of DIC payable to a parent under tables 2 through 4 shall be increased by $147 if such parent is (1) a patient in a nursing home, or (2) helpless or blind, or so nearly helpless or blind as to need or require the regular aid and attendance of another person.

Minimum rate. The monthly rate of DIC payable to any parent under tables 2 through 4 shall not be less than $5.

Section 306 Pension Income Limitations

Table 5

(1) Veteran or surviving spouse with no dependents, $6,783 (Pub. L. 95–588, section 306(a)).

(2) Veteran with no dependents in need of aid and attendance, $7,283 (38 U.S.C. 521(d) as in effect on December 31, 1978).

(3) Veteran or surviving spouse with one or more dependents, $9,120 (Pub. L. 95–588, section 306(a)).

(4) Veteran with one or more dependents in need of aid and attendance, $9,620 (38 U.S.C. 521(d) as in effect on December 31, 1978).

(5) Child (no entitled veteran or surviving spouse), $5,543 (Pub. L. 95–588, section 306(a)).

(6) Spouse income exclusion (38 CFR 3.262), $2,161 (Pub. L. 95–588, section 306(a)(2)(B)).

Old-Law Pension Income Limitations

Table 6

(1) Veteran or surviving spouse without dependents or an entitled child, $5,937 (Pub. L. 95–588, section 306(b)).

(2) Veteran or surviving spouse with one or more dependents, $8,562 (Pub. L. 95–588, section 306(b)).

Headstone or Marker Allowance

Under 38 U.S.C. 906(d) the VA may provide reimbursement for the cost of non-Government headstones or markers at a rate equal to the actual cost or the average actual cost of Government-furnished headstones or markers during the fiscal year preceeding the fiscal year in which the non-Government headstone or marker was purchased, whichever is less.

The average actual cost of Government-furnished headstones and markers during any fiscal year is determined by dividing the sum of the VA's costs during that fiscal year for procurement, transportation, Monument Service and miscellaneous administration, inspection and support staff by the total number of headstones and markers procured by the VA during that fiscal year and rounding to the nearest whole dollar amount.

The average actual cost of Government-furnished headstones or markers for fiscal year 1986 under the above computation method was $71. Therefore, effective October 1, 1986, the maximum rate of reimbursement for non-Government headstones or markers purchased during fiscal year 1987 is $71.

Dated: November 3, 1986.

Thomas K. Turnage,

Administrator.

[FR Doc. 86–25052 Filed 11–4–86; 8:45 am]

BILLING CODE 8320-01-M

Advisory Committee on Native American Veterans; Rescheduled Meeting

The meeting of the Advisory Committee on Native American Veterans which was scheduled for November 12 through 14, 1986, (51 FR 36630, October 14, 1986), has been rescheduled to December 10 through 12, 1986. The sessions will be held in the Omar Bradley Conference Room, Veterans Administration Central Office, 810 Vermont Avenue, NW., Washington, DC. The meetings on December 10 and 11 will convene at 8:30 a.m., and run until 4:30 p.m. The December 12 meeting will convene at 8:30 a.m., and adjourn at 12:30 p.m. All sessions will be open to the public up to the seating capacity of the room. To assure adequate accommodations, those who plan to attend should contact Mr. John Fulton, M.S.W., Coordinator, Advisory Committee on Native American Veterans, (202) 233–2614.

Dated: October 27, 1986.

By direction of the Administrator:

Rosa Maria Fontanez,

Committee Management Officer.

[FR Doc. 86–24997 Filed 11–4–86; 8:45 am]

BILLING CODE 8320-01-M

Performance Review Board Members List

AGENCY: Veterans Adminstration.

ACTION: Notice.

SUMMARY: Under the provisions of 5 U.S.C. 45314(c)(4) agencies are required to publish a notice in the **Federal Register** of the appointment of Performance Review Board (PRB) members. This notice revises the list of members of the Veterans Adminstration's Performance Review Boards which was published in the **Federal Register** (50 FR 47323, November 15, 1985).

EFFECTIVE DATE: November 1, 1986.

FOR FURTHER INFORMATION CONTACT: K. Joyce Edwards, Office of Personnel and Labor Relations (05A3, Veterans Adminstration, 810 Vermont Aveue, NW, Washington, DC 20420, (202) 233–3423.

The members of the VA's Performance Review Board are:

VA Performance Review Board

Chairperson

Thomas E. Harvey, Deputy Administrator

Members

John A. Gronvall, M.D., Acting Chief Medical Director
John Vogel, Chief Benefits Director
Arthur S. Hamerschlag, Acting Chief Memorial Affairs Director
Susan Livingstone, Asssociate Deputy Administrator for Logistics
Joan E. Lamb, Associate Deputy Administrator for Public and Consumer Affairs
Burt L. Talcott, Associate Deputy Administrator for Congressional and Intergovernmental Affairs
David A. Cox, Associate Deputy Administrator for Management
Donal L. Ivers, General Counsel
Kenneth E. Eaton, Chairman, Board of Veterans Appeals
Jack J. Sharkey, Director, Office of Data Management and Telecommunications
Conrad R. Hoffman, Director, Office of Budget and Finance (Controller)
Raymond S. Blunt, Director, Office of Program Analysis and Evaluation
Gerald E. Neumann, Director, Office of Facilities
Michel Rudd, Director, Office of Personnel and Labor Relations
E. L. Harper, Acting Director, Office of Procurement and Supply
Robert W. Schultz, Director, Office of Information Management and Statistics
Renald P. Morani, Deputy Inspector General

Alternate

Arthur J. Lewis, M.D. Acting Deputy Chief Medical Director

Department of Medicine and Surgery

Performance Review Board

Chairperson

Arthur J. Lewis, M.D. Acting Deputy Chief Medical Director

Members

Robert E. Lindsey, Jr., Director for Operations
D. Earl Brown, Jr., M.D., Associate Deputy Chief Medical Director for Programs, Planning and Policy Development
Albert B. Washko, Director, Northwest Region
Donald, B. Thompson, Director, Southeast Region
Albert Zamberlan, Director, Great Lakes Region

Sidney M. Ford, Director, Midwestern Region
Richard P. Miller, Director, Southwestern Region
Alvis B. Carr, Jr., Acting Director, Western Region
John J. Lee, Director, Mid-Atlantic Region
Charles V. Yarbrough, Director, Management Support Office
Francis E. Conrad, M.D., Director, Office of Quality Assurance
Frederick L. Malphurs, Director, Resource Management Office

Department of Veterans Benefits

Performance Review Board

Chairperson

David A. Brigham, Executive Assistant to the Chief Benefits Director

Members

Raymond H. Avent, Deputy Chief Benefits Director for Field Operations
Grady W. Horton, Deputy Chief Benefits Director for Program Management
Paul D. Ising, Deputy Chief Benefits Director for ADP Systems Management
Robert W. Gardner, Director, Budget Staff
Gerald P. Moore, Director, Compensation and Pension Service
Edward D. Green, Director, Veterans Assistance Service
Robert M. O'Toole, Director, Loan Guaranty Service
Dennis R. Wyant, Director, Vocational Rehabilitation and Counseling Service

Office of the Inspector General

Performance Review Board

Chairperson

James H. Curry, Assistant Inspector General for Audit Policy and Oversight, Department of Defense

Members

Joseph Genovese, Acting Inspector General, Department of Transportation
Raymond S. Blunt, Director, Office of Program Analysis and Evaluation

Alternates

Conrad R. Hoffman, Director, Office of Budget and Finance (Controller)

Dated: October 29, 1986.

Thomas K. Turnage,

Administrator.

[FR Doc. 86-24998 Filed 11-4-86; 8:45 am]

BILLING CODE 8320-01-M

Sunshine Act Meetings

Federal Register

Vol. 51, No. 214

Wednesday, November 5, 1986

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

CONTENTS

1

INTERNATIONAL TRADE COMMISSION

TIME AND DATE: Wednesday, November 5, 1986 at 10:00 a.m.

PLACE: Room 117, 701 E Street, NW., Washington, DC 20436.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda
2. Minutes
3. Ratifications
4. Petitions and Complaints:
   Certain battery-powered smoke detectors (Docket Number 1350).
5. Inv. No. 701-TA-265 (Final) and 731-TA-297, 298, and 299 (Final) (Porcelain-on-steel cooking from Mexico, the People's Republic of China, and Taiwan)—briefing and vote.
6. Update of discussion of the Management Review of Procurement, ADP, and the Property Management Systems.
7. Any items left over from previous agenda.

CONTACT PERSON FOR MORE INFORMATION: Kenneth R. Mason, Secretary (202) 523-0161.

Kenneth R. Mason,

Secretary.

October 23, 1986.

[FR Doc. 86-25032 Filed 11-3-86; 9:10 am]

BILLING CODE 7020-02-M

2

INTERNATIONAL TRADE COMMISSION

TIME AND DATE: Friday, November 14, 1986 at 2:00 p.m.

PLACE: Room 117, 701 E Street, NW., Washington, DC 20436.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda
2. Minutes
3. Ratifications
4. Petitions and Complaints
5. Inv. No. 731-TA-349 (Preliminary) (Certain welded carbon steel pipes and tubes from Taiwan)—briefing and vote.
6. Any items left over from previous agenda.

CONTACT PERSON FOR MORE INFORMATION: Kenneth R. Mason, Secretary (202) 523-0161.

Kenneth R. Mason,

Secretary.

October 27, 1986.

[FR Doc. 86-25033 Filed 11-3-86; 9:11 am]

BILLING CODE 7020-02-M

3

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of November 3, 10, 17, and 24, 1986.

PLACE: Commissioners' Conference Room, 1717 H Street, NW., Washington, DC.

STATUS: Open and Closed.

MATTERS TO BE CONSIDERED:

Week of November 3

Monday, November 3

10:00 a.m.
Discussion of Management-Organization and Internal Personnel Matters (Closed—Ex. 2 & 6)

2:00 p.m.
Briefing on GE Containment Program (Public Meeting)

Thursday, November 6

10:00 a.m.
Briefing on Assessment of B&W Plants (Public Meeting)

2:00 p.m.
Briefing on Initiatives to Improve Maintenance Performance (Public Meeting)

3:30 p.m.
Affirmation/Discussion and Vote (Public Meeting)
a. Braidwood—Draft Order for Resolution of Dispute Between Braidwood Board and OI Over Disclosure of Investigatory Information (Tentative)
b. "Motion for Reformation" in Braidwood (Tentative)

Friday, November 7

10:00 a.m.
Briefing on Status of Performance Indicator Program (Public Meeting) (Postponed from October 31)

Week of November 10—Tentative

Monday, November 10

2:00 p.m.
Briefing on Thermal Hydraulic Research Program (Public Meeting)

Friday, November 14

10:00 a.m.
Affirmation Meeting (Public Meeting) (if needed)

Week of November 17—Tentative

Wednesday, November 19

10:00 a.m.
Discussion of Pending Investigations (Closed—Ex. 5 & 7) (Postponed from October 31)

2:00 p.m.
Briefing in Advance of Publication of Draft NUREG-1150 (Source Term) (Public Meeting)

Thursday, November 20

10:00 a.m.
Discussion of Mangement-Organization and Internal Personnel Matters (Closed—Ex. 2 & 6)

2:00 p.m.
Periodic Meeting with NUMARC (Public Meeting)

3:30 p.m.
Affirmation Meeting (Public Meeting) (if needed)

Friday, November 21

10:00 a.m.
Discussion Possible Vote on Davis Besse Restart (Public Meeting)

Week of November 24—Tentative

Wednesday, November 26

10:00 a.m.
Affrimation Meeting (Public Meeting) (if needed)

ADDITIONAL INFORMATION: Affirmation of "Disposition of Petitions for Hearing Regarding October 1986 Order Modifyng License of Sequoyah Fuels Corporation" (Pulbic Meeting) was held on October 30.

TO VERIFY THE STATUS OF MEETINGS CALL (RECORDING): (202) 634-1498.

CONTACT PERSON FOR MORE INFORMATION: Robert McOsker (202) 634-1410.

Robert B. McOsker,

Office of the Secretary.

[FR Doc. 86-25019 Filed 10-31-86; 8:45 am]

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4

PACIFIC NORTHWEST ELECTRIC POWER AND CONSERVATION PLANNING COUNCIL

(Northwest Power Planning Council).

STATUS: Open. The Council will also hold an executive session to discuss civil litigation and personnel matters.

TIME AND DATE: November 12–13, 1986, 9:00 a.m.

PLACE: Council Offices, 850 SW. Broadway, Suite 1100, Portland, Oregon.

MATTERS TO BE CONSIDERED:

November 12

1. Public Comment and Council Action on a Process and Criterion for Determining Consistency under the Resource Acquisition Provisions of the Northwest Power Act (Section 6(c)).
2. Council Action to Enter Rulemaking to Amend the Model Conservation Standards for New Residential Buildings.
3. Public Comment on Petitions to Revise the Model Conservation Standards for New Commercial Buildings, to Adopt Model Conservation Standards for Existing Residential Buildings, to Reinstate Surcharge for Conversion Standards, and to Adopt Model Conservation Standards for the Direct Service Industries and Federal Agency Customers.
4. Status Report on Regional Economy and Loads.

November 13

5. Staff Presentation and Public Comment on Issue Paper on Salmon and Steelhead System Objective and Policies.
6. Staff Presentation, Public Comment and Council Action on Bonneville Power Administration Work Plan for Fish and Wildlife.
7. Council Business.
8. Public Comment.

FOR FURTHER INFORMATION CONTACT: Ms. Bess Atkins at (503) 222–5161.

Edward Sheets,

Executive Director.

[FR Doc. 86–25043 Filed 11–3–86; 9:12 am]

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Vol. 51, No. 214

Wednesday, November 5, 1986

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FEDERAL REGISTER PAGES AND DATES, NOVEMBER

39847-39992.....3
39993-40120.....4
40121-40300.....5

CFR PARTS AFFECTED DURING NOVEMBER

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Proclamations:
5562.....39849
5563.....39851
Administrative Orders:
Presidential Determinations:
No. 87-2 of
October 22, 1986.....39847

5 CFR

Ch. XIV.....40121
532.....39853

7 CFR

68.....40121
910.....39853
989.....40122
Proposed Rules:
57.....40174
68.....40174
1011.....40030
1064.....40176
1102.....40176
1106.....40176
1108.....40176
1126.....40176
1137.....39863
1138.....40176

8 CFR

103.....39993
316a.....40123
Proposed Rules:
103.....40207
214.....40207

9 CFR

92.....40124
Proposed Rules:
115.....40034
118.....40034

10 CFR
Proposed Rules:
70.....40208
74.....40208

12 CFR

225.....39994
543.....40127
546.....40127
552.....40127
562.....40127
563.....40127
563b.....40127
574.....40127

13 CFR

107.....40000

14 CFR

39.....40001-40003
71.....39855, 40156
Proposed Rules:
39.....39864, 39865, 40032-40035, 40209, 40210
71.....39866, 39867, 40036
150.....40037

15 CFR

372.....40156
373.....40156
374.....40156
377.....40156
379.....40156
390.....40156
399.....40159

16 CFR

307.....40005
Proposed Rules:
13.....40039

17 CFR

Proposed Rules:
201.....39868
229.....39868
230.....39868

21 CFR

73.....40160
81.....39856
172.....40160

22 CFR

526.....40160
527.....40160

26 CFR

31.....40167
602.....40167
Proposed Rules:
1.....40211
7.....40211
20.....40211
25.....40211
31.....40232
53.....40211
56.....40211

27 CFR

19.....40023

30 CFR

705.....40026

31 CFR

316.....39990
332.....39990
342.....39990
351.....39990
352.....39990

33 CFR

110.....39857
117.....39857

39 CFR

776.....40170

40 CFR

260.....39859
261.....39859
262.....39859
264.....39859
265.....39859
268.....39859
270.....39859
271.....39859

Proposed Rules:

60.....40043
81.....40043
261.....39968

42 CFR

Proposed Rules:

36.....40108

44 CFR

64.....39859

45 CFR

96.....40026

47 CFR

73.....40170
97.....39859

Proposed Rules:

67.....40232

48 CFR

502.....39861
509.....39861
516.....39862

Proposed Rules:

1.....39964
22.....39964
52.....39964
53.....39964
PHS 352.....40108

49 CFR

1135.....40171
1312.....40171

Proposed Rules:

Ch. V.....39877

50 CFR

216.....40171
652.....40173
671.....40027

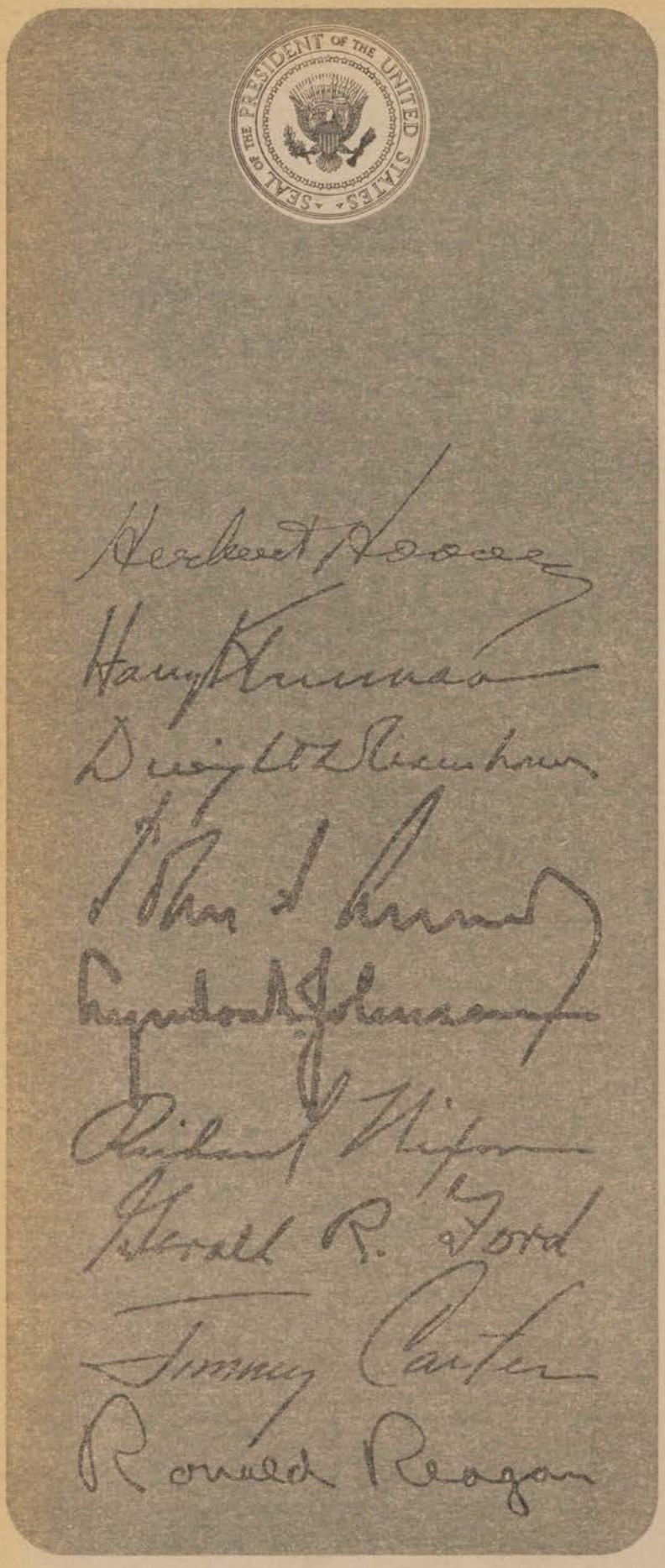
Proposed Rules:

17.....40044-40051
644.....40233

LIST OF PUBLIC LAWS

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's **List of Public Laws.**

Last List November 3, 1986



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